STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Wisconsin Energy Corporation, Integrys Energy Group, Inc., Peoples Energy, LLC, The Peoples Gas Light and Coke Company, North Shore Gas Company, ATC Management Inc., and American Transmission Company LLC	)	
Application pursuant to Section 7-204 of the Public Utilities Act for authority to engage in a Reorganization, to enter into an agreement with affiliated interests pursuant to Section 7-101, and for such other approvals as may be required under the Public Utilities Act to effectuate the Reorganization.	)	Docket No. 14-0496

EXCEPTIONS AND BRIEF ON EXCEPTIONS OF THE PEOPLE OF THE STATE OF ILLINOIS

The People of the State of Illinois

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ORAL ARGUMENT REQUESTED

May 26, 2015

TABLE OF CONTENTS

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The People of the State of Illinois ("AG" or "the People", by Lisa Madigan, Attorney General of the State of Illinois, pursuant to Section 200.830 of the Illinois Commerce Commission's ("the Commission" or "ICC") Rules of Practice, 83 Ill. Admin. Code § 200.830, hereby file their Exceptions and Briefs on Exceptions in the above-captioned proceeding.

I. INTRODUCTION

Confronted with a bid to acquire one of the state's major public utilities as well as the revelation of serious and far-reaching management failures in that same utility, this Commission is faced with dual challenges, but one overriding goal: to ensure that the ratepayers it is charged to protect pay only for those services provided in accordance with Illinois law. There is no conflict between the responsibilities the Commission faces regarding assessing the current

management of the Peoples Gas' Accelerated Main Replacement Program ("AMRP") and ensuring that rates and utility service are not negatively impacted under a potential new owner for Peoples Gas ("PGL" or "Peoples Gas") and North Shore Gas ("NS" or "North Shore" and collectively with PGL, the "Gas Companies"), Wisconsin Energy Corporation ("WEC") under Section 7-204 of the Act. The singular duty of the Illinois Commerce Commission -- to ensure that utility ratepayers pay only just and reasonable rates and that utility practices are similarly just and reasonable -- is a bedrock principle underlying all provisions of the Public Utilities Act, 220 ILCS 5/1-101 *et seq*. ("the Act"), including the corporate reorganization provisions of Section 7-204 of the Act.

Now that the AMRP's shortcomings have been described in detail by the Commission-appointed auditor in the Final Report of The Liberty Consulting Group ("Liberty") (such report, the "Liberty Final Report," also attached as **Appendix A** to this Brief on Exceptions) on its investigation of PGL's AMRP, including Liberty's finding that continuing the program's status quo would be "unreasonable and imprudent," ratepayers need the Commission to do everything within its power to protect them from unfair rates and utility practices going forward – particularly when the Commission is considering handing over the responsibility and management of the AMRP to a new owner.[1] Given the revelations in Liberty's Final Report and the position of the Joint Applicants[2] ("JA") that "improvement of deficiencies" would be above

[1] The People request, pursuant to Section 200.640(a) of the Commission's Rules of Practice, that the Commission take administrative notice of the Liberty Final Report. The full Report is attached to this Brief as Appendix A.

[2] The Joint Applicants consist of Wisconsin Energy Corporation ("WEC"), Integrys Energy Group, Inc. ("Integrys"), Peoples Energy, LLC, PGL, NS, ATC Management Inc., and American Transmission Company LLC.

and beyond what is required for the protection of interests[3], more stringent conditions on the merger, if it is approved, are the only way to ensure that protection.

The Joint Applicants would have the Commission believe that no affirmative action on behalf of ratepayers is needed. Rather, the Joint Applicants insist that all that is legally required for the Commission to bless the merger is that the status quo merely be maintained. For example, WEC's President dismissed concerns about the future operations of the troubled AMRP as "unrelated to the proposed Reorganization." JA Ex. 6.0 at 9:272. The People strongly disagree and remind the Commission that the issues that triggered the audit are inextricably linked to the issues that must be resolved before any merger can be approved pursuant to Section 7-204. When asked by the Commission in data requests directed to the JA whether any transition plans existed between WEC and Peoples Gas related to the AMRP management, the JA admitted that they have "no formal transition plan at this time." JA Responses to Commissioners' Data Requests at 2 ("JA Responses"). To say this should trouble the Commission is an understatement.

The Commission's duty to protect just and reasonable rates is its paramount regulatory responsibility. Article IX of the Act requires that all public utility charges be just and reasonable and that all rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. 220 ILCS 5/9-101; 220 ILCS 5/8-101. Should the Commission find that existing rates are not just and reasonable, it is required to establish new rates that meet that standard. 220 ILCS 5/9-201.

This obligation to ensure that ratepayers are charged only just and reasonable rates underlies both the Commission's audit powers as well as its authority to approve the acquisition

[3] AG Ex. 5.1 at 1.

of a public utility through a merger. In Article VIII of the Act, the General Assembly granted the Commission the authority to audit public utility rates and operations to enforce its duty to protect just and reasonable rates.[4] Similarly, Article VII implicates the duty to protect just and reasonable rates in its provisions governing mergers and reorganizations. The criteria that acquiring companies seeking merger with a public utility must meet in order to fulfill Section 7-204 of the Act include that "the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service" (220 ILCS 5/7-204(b)(1)) and that "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers" (220 ILCS5/7-204(b)(7)).

The Commission initiated the AMRP audit after concluding that the "AMRP has accomplished little and has been mismanaged" and because Peoples Gas "has given the Commission no reason to believe that it can complete the AMRP in 20 years," submitted no evidence of what the total cost of the AMRP would be, provided insufficient details to move the project forward, and prepared no budget". Order, Docket Nos. 12-0511/0512 (cons.) at 46-48. It directed Liberty to evaluate the prudence of the program on a going-forward basis, and as part of its investigation, the auditor reported it was asked to answer the following question: "Were Peoples Gas to determine to continue the AMRP in the future largely as it has been and is doing now, could one conclude that the program is being performed reasonably and prudently, in the

[4] An audit "…may examine the reasonableness, prudence, or efficiency of any aspect of the utility's operations, costs, management, decisions or functions that may affect the adequacy, safety, efficiency or reliability of utility service or the reasonableness or prudence of the costs underlying rates or charges for utility service. 220 ILCS 5/8-102 Indeed, the Commission is authorized to order an audit "…only when it has reasonable grounds to believe that the audit or investigation is necessary to assure that the utility is providing adequate, efficient, reliable, safe, and least-cost service and charging only just and reasonable rates therefor, or that the audit or investigation is likely to be cost-beneficial in enhancing the quality of service or the reasonableness of rates therefor." 220 ILCS 5/8-102 (emphasis added).

absence of at least substantial changes along the lines recommended to improve future performance?" Liberty Final Report at B-3.

The auditors' answer was unequivocal:

> It would be unreasonable and imprudent for Peoples Gas to continue the AMRP in the future largely as it has been and is doing now. The program requires substantial compliance with the recommendations of this report to bring it into sufficient conformity with good utility practice and to incorporate best practices appropriate to the program's scope, duration and public importance.

Liberty Final Report at B-4.

The need for the Commission to act now could not be clearer. It must follow through on the initial steps it took to protect the public interest when it ordered the audit and take immediate steps to protect ratepayers. The Proposed Order ("PO") issued by the Administrative Law Judge ("ALJ") on May 14, 2015 explicitly recognizes its duty to do so, observing that "Section 7-204(f) "…provides the Commission with an obligation to impose conditions that it believes are necessary and appropriate to protect the public interest." PO at 11.

Given the serious revelations of mismanagement contained in the auditor's findings and in light of the Commission's responsibilities under the Act to ensure that ratepayers pay only just and reasonable rates for "adequate, reliable, efficient, safe and least-cost" utility service, the Commission, if it approves the transaction, must reconsider the merger conditions listed in the Proposed Order in light of the auditor's recommendations. While the Attorney General's Office, on behalf of the People, has proposed conditions designed to do just that, a deeper review of the audit's recommendations will likely point to the need for further protections.

The People intend to petition the Commission that no decision on the merger take place unless and until the audit is considered as the basis for additional safeguards against unjust and

unreasonable rates and practices at Peoples Gas. The Commission's obligations under the Act to protect the public interest require no less. This Brief on Exceptions attempts to highlight the omissions of the Proposed Order in that regard until that more deliberate consideration occurs. The decisions as to what conditions are necessary, assuming Commission approval of the merger, are critical to ensuring that the Section 7-204(b)(1) and (7) requirements are met, and that the interests of PGL customers and of the utility itself are protected. With that in mind, the People respectfully request that oral argument be granted in this case – particularly in light of the recent release of the Liberty Final Audit Report. Commission consideration of the auditors' findings and recommendations in an oral argument setting is essential to ensuring that the right conditions are attached to any merger approval.

II. EXCEPTION No. 1: THE PROPOSED ORDER'S CONCLUSION THAT THE JOINT APPLICANTS SATISFIED SECTION 7-204(B)(1) IS IN ERROR; IT SHOULD BE REVERSED.

At pages 28-31, the Proposed Order finds that the proposed transaction satisfies Section 7-204(b)(1)'s requirement that it "will not diminish the public utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service." 220 ILCS 5/7-204(b)(1). The Proposed Order's conclusion is in error and should be reversed.

As the basis for its conclusion, the Proposed Order makes several statements that deal, either directly or indirectly, with the major contested issue in this case – if approved, what impact would the proposed transaction have on Peoples Gas's problem-plagued AMRP? These statements are:

- "There has been nothing developed in the record to show that the service quality of [Peoples Gas and North Shore] will be impaired by the approval of the [transaction]." PO at 30.

- This proceeding "is not the proper forum for either evaluating or implementing specific corrective action with respect to the AMRP, or examining the ongoing Liberty investigation. Doing so is beyond the scope of a Section 7-204 proceeding, which is focused on maintaining the service quality of a utility's operations, not developing specific improvements to its management and operations." *Id*. at 29.

- "Adoption of the conditions agreed to by the Joint Applicants and Staff for the implementation of the recommendations from Liberty's Final Report and cooperation with Staff and Liberty in the verification process will protect the interests of ratepayers pursuant to Section 7-204(b)(1)." *Id*.

- "The Commission finds that the evidence supports the conclusion that the Joint Applicants have demonstrated that they will be ready, willing and able to undertake the implementation of the AMRP with the scope and scale of the additional remedies likely to be seen in Liberty's Final Report." *Id*.

- "[T]he Commission finds that the Joint Applicants are working appropriately towards a transition plan and integration of operations in light of the evidence that there will be significant continuity in the employees making daily operational decisions for [Peoples Gas and North Shore]." *Id* at 30.

As these statements show, the Proposed Order's answer to the question of what impact the merger would have on the AMRP is that the Joint Applicants demonstrated that the transaction will not have a detrimental effect on Peoples Gas's "ability to provide adequate, reliable, efficient, safe, and least-cost public utility service." However, the Proposed Order's statements are neither supported by the record nor consistent with Commission precedent.

A. The Proposed Order's Conclusion that the Proposed Merger Will Not Diminish the Utility's Ability "to Provide Adequate, Reliable, Efficient, Safe, and Least-Cost Public Utility Service" Is Not Supported by the Evidence.

Contrary to the Proposed Order's conclusion, the record demonstrates that the Joint Applicants failed to prove that they are ready and able to step into the shoes of PGL/Integrys to manage the day-to-day operations of Peoples Gas, and to seamlessly oversee the operation and management of the PGL AMRP. Having failed to do so, the JA did not meet their burden of proving that the proposed transaction "will not diminish [Peoples Gas's] ability to provide adequate, reliable, efficient, safe, and least-cost public utility service." 220 ILCS 5/7-204(b)(1).

The JA admitted that "Wisconsin Energy's pre-merger due diligence did not include investigation into the specifics of the Gas Companies' 'on-the-ground' operations, such as detailed work plans for the AMRP." JA IB at 12, citing Leverett Reb., JA Ex. 6.0, 14:385-387; Reed Reb., JA Ex. 8.0, 13:259-268; AG Cross Ex. 3 (JA response to data request AG 4.01). JA's admission is an understatement. At best, the Joint Applicants seem to have a passing interest in the day-to-day operations of Peoples Gas, and, in particular, its problem-riddled $4.6 billion main replacement project, the AMRP. The JA's position can perhaps be best boiled down to "trust us, we know what we are doing." Unfortunately, the Proposed Order accepts the JA's assurances. However, Section 7-204(b)(1) requires more.

The evidence shows that WEC is *not* ready to assume control of the PGL AMRP. WEC witnesses betrayed a worrisome lack of understanding of the basics of the AMRP. For example, the JA admitted that WEC:

- Was not aware that PGL lacked any overall plan for the AMRP (Tr. at 187).
- Performed no analysis of whether PGL had in place formal written guidelines or procedures related to the AMRP (Tr. at 196);
- Could not name who is in charge of the AMRP at Peoples (Tr. at 206, 207);
- Had no knowledge of the number of miles of main that PGL has replaced to date or has remaining to replace (Tr. at 220);
- Had no understanding of the main ranking index PGL uses to prioritize main replacement from a safety and reliability perspective (Tr. at 237);
- Performed no review of PGL's internal PricewaterhouseCoopers audits, which identified operational deficiencies and needed remedial action in the AMRP (Tr. at 182-183);
- Had no communication with Integrys employee and JA witness David Giesler, who is responsible for project planning, execution, control, and close out for the AMRP, and was the JA witness from Peoples Gas responding to Intervenor criticisms of the program (JA Ex. 1.0 at 1:9-10);

- Did not include the JA witness, Andrew Hesselbach in WEC's due diligence review of Integrys/Peoples Gas, even though Mr. Hesselbach sponsored testimony in response to the ALJ's January 14, 2015 directive to file testimony indicating "whether the JA are aware of the scope and scale of the potential obligations under AMRP" and "whether the JA are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit") (Tr. at 183);

- Performed no analysis of whether the Staff-requested 2030 AMRP completion date was even feasible (Tr. at 221), despite including it as a Joint Applicant commitment in Rebuttal testimony;

- Had no idea how long an assessment of the feasibility of achieving a 2030 completion date would take (Tr. at 222);

- Had no opinion as to whether the AMRP is currently on track to achieve a 2030 completion date (Tr. at 222).

In fact, the Joint Applicants repeatedly insisted that the AMRP was not relevant to the Commission's evaluation of the proposed transaction. *See*, *e.g.* JA Ex. 6.0 at 9:261-265, 13:356-358; JA IB at 2, 33, 33-34. It was not until Liberty issued its Interim Report and the ALJ's subsequent ruling requiring the Joint Applicants to file supplemental testimony addressing "(1) whether the Joint Applicants are aware of the scope and scale of the potential obligations under AMRP; and (2) whether Joint Applicants are ready, willing and able to implement the AMRP consistent with additional remedies as recommended by the Liberty audit" (Notice of ALJ Ruling dated Jan. 14, 2015) that the JA deemed it necessary to address the AMRP in any detail.[5] Even then, the Joint Applicants' testimony was limited primarily to a recitation of WEC's history in managing large construction projects and their assertion that they are "ready, willing, and

[5] To be fair, the JA did submit the Rebuttal testimony of David Giesler, who touched on the AMRP. However, there was little substance to his AMRP testimony. Mr. Giesler's testimony consisted primarily of (1) his categorical rejection (without citing any evidence or providing any explanation) of the harsh criticisms of the AMRP levied by AG witness Coppola and City-CUB witness Cheaks and (2) presenting, pursuant to a request made by Staff, the PricewaterhouseCoopers' audit of the program. JA Ex. 10.0 at 2-3:40-44, 3-4:61-76.

able" to assume management of the AMRP. *See, gen'ly,* JA Ex. 12.0 (Leverett Supplemental Rebuttal), JA Ex. 13.0 (Hesselbach Supplemental Rebuttal) and JA Ex. 14.0 (Leverett Supplemental Reply). There was no discussion of transition plans or efforts that WEC had made to date to prepare itself to take control of the main replacement program.

In his Direct testimony, Staff witness Eric Lounsberry was deeply troubled by the Joint Applicant's lack of investigation of the critical operations of the PGL AMRP. Mr. Lounsberry explained why it was necessary for WEC to conduct a meaningful due diligence review of Peoples Gas, stating:

> I examined the due diligence reviews to determine the level of familiarity WE has with how Integrys operates and the risk WE is assuming when it becomes responsible for the Peoples Gas aging gas distribution infrastructure and the AMRP program. WE would need to be familiar with Integrys' practices in order to determine whether Integrys' practices are consistent with WE's current operations, and/or how to integrate the two companies' practices. Inconsistent practices might lead to the conclusion that the reorganization is not a good fit or that one or both parties must make significant changes to their practices in order to integrate them.

Staff Ex. 2.0 at 20-21:487-495.

Mr. Lounsberry went on to say:

> The Commission has made it clear in the past that it has concerns about Peoples Gas' aging cast iron and ductile iron gas mains and Peoples Gas' willingness and ability to successfully complete the AMRP. It seems reasonable that WE would make itself familiar with Peoples Gas' aging infrastructure. Such a review would have looked at the issues created by the large amount of cast iron and ductile iron gas mains remaining in service, the AMRP program with its scheduling and budgeting problems.

Id. at 21:508-514.

Mr. Lounsberry then reviewed the "due diligence" WEC conducted, concluding that

> [T]he Joint Applicants *conducted no review* to determine the level of effort and expenditure it would take on their part to make any of this happen, assuming they can make any of these changes happen at all. This is especially true of larger capital project management, which is what AMRP clearly requires. […]
>
> In my opinion, the AMRP is the most risky capital project undertaken by a utility in Illinois since Commonwealth Edison Company and Illinois Power Company began constructing their nuclear powered generation plants, each of which ultimately cost billions of dollars each to complete. *[The AMRP] is very clearly not, as WE has described it above, part of Peoples' Gas "day-to-day" operations.*

Id. at 23:566-24:570 (emphasis added).

Unfortunately, Mr. Lounsberry later testified that he was satisfied that WEC had performed adequate due diligence, with little explanation except to note that the JA's must now be aware of the AMRP problems in light of intervenor testimony detailing the rampant mismanagement of the AMRP and the JA's commitment to implement a heavily qualified Liberty audit finding and implementation process. Staff Ex. 9.0 at 27:655-662. This change in position is startling, given the importance of the AMRP to PGL customer service and rate levels, and the JA's insistence that the AMRP is unrelated to merger approval. Staff seems to suggest that it is appropriate for due diligence to be conducted during the middle of a merger proceeding, *after* the decision to acquire a utility has been made.

As Mr. Coppola aptly testified, the AMRP is not a small operational program to be dealt with in post-merger due diligence. Astounded by the JA's response to AMRP concerns and its clear lack of due diligence in reviewing the obligations and problems of the AMRP, Mr. Coppola stated:

> The AMRP is fundamental to the future earning power, reliability, and safety of the Peoples Gas delivery system. It is not only material to the entities being acquired, it is essential to the success

> of the acquisition. The facts (1) that the Commission ordered an audit of the AMRP and (2) that completing the program by 2030 requires investing more than $4 billion in capital expenditures should have triggered a need to perform some significant due diligence. By any reasonable standard, a $4 billion capital program is material in this merger transaction. For the Joint Applicants not to have done a reasonable amount of due diligence of the program in the pre-merger phase raises grave concerns about Wisconsin Energy's understanding of the current state of the AMRP and its priorities and commitments to complete the AMRP in a way that will not harm customers if the merger is approved.

AG Ex. 4.0 at 17-18:333-344. City/CUB witness Cheaks similarly found the JA's level of due diligence lacking, noting that it "fails to give the ICC confidence that AMRP will be properly managed and the interests of PGL's ratepayers protected." City/CUB Ex. 3.0 at 46:891-901.

The Proposed Order glosses over the Joint Applicants' failure to conduct meaningful due diligence of the AMRP, deciding to accept the JA's almost-completely-unsupported claim that WEC is "ready, willing, and able" to assume responsibility of the AMRP. The Commission, however, cannot ignore the JA's seeming indifference, because the evidence shows that WEC has made no substantive showing that it is prepared to assume responsibility for the PGL AMRP. Ratepayers should not be required to pay the price of WEC's failure to properly prepare itself and the almost-certain-increased costs associated with WEC trying to bring the AMRP under control.

B. The Proposed Order's Statement that the "Joint Applicants Are Working Appropriately Towards a Transition Plan and Integration of Operations" Is Wholly Unsupported in the Record.

As noted above, the Proposed Order makes the remarkable statement that the "Joint Applicants are working appropriately towards a transition plan and integration of operations…." PO at 31. This statement has no support in the record. In fact, the Joint Applicants' final statement in the record regarding the AMRP contradicts the Proposed Order's conclusion.

1. The Joint Applicants Admitted that They Have Not Developed a Transition Plan for the AMRP.

On March 11, 2015, the Commission issued a set of data requests to the Joint Applicants. The Commissioners' data requests sought information about one subject – Peoples Gas's trouble-ridden AMRP. In particular, the data responses asked for transition plans the JA have in place "to ensure a seamless changeover that avoids any diminishment of the *utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service* both leading up to and after closing the proposed reorganization."[6] Notice of Commissioners' Data Request at 2-3 (emphasis added). At a minimum, the Commission's data requests imply that the ICC believes that the presence of transition plans is important to the determinations it must make under Section 7-204(b)(1) of the Act.

In their responses to the Commissioners' Requests, the JA admitted that they have "no formal transition plan at this time." JA Responses at 2. Rather than providing the information requested by the Commission, the Joint Applicants, as City/CUB witness William Cheaks, Jr. aptly put it, "describe[d] aspirational initiatives, not concrete commitments, and their compliance is not readily measurable or enforceable." City/CUB Ex. 11.0 at 2. Mr. Cheaks added that the Joint Applicants' responses "do not provide any plans or commitments to correct the specific deficiencies in AMRP." *Id*. at 1-2. In an apparent effort to excuse their lack of a transition plan, the JA highlighted a customer outreach program that WEC has initiated in Wisconsin that they say could be made part of the AMRP. JA Responses at 7. AG witness Coppola noted that talking about a customer communication while the main replacement program has been – and

[6] The highlighted portion of the quote from the Commissioners' Data Requests is taken directly from Section 7-204(b)(1) of the Act.

continues to be – in a state of distress "is akin to rearranging the deck chairs on the Titanic while the ship is sinking." AG Ex. 7.0 at 5.

2. The Commission Found in the 2011 Nicor Merger Case that AGL/Nicor's Extensive "Integration Planning Process" Was Integral to the Commission's Conclusion that the Joint Applicants in that Case Satisfied the Obligations of Section 7-204(b)(1).

The Joint Applicants' complete failure to prepare a transition plan is in stark contrast to the joint applicants in the last major energy merger case decided by the Commission. There, the ICC stressed the importance of the transition plans that the Illinois utility and its proposed purchaser had in place so that no "diminishment of the utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service" would occur as a result of the acquisition.

In that case, Georgia-based AGL Resources Inc. ("AGL") proposed to purchase Nicor Inc., the parent company of Northern Illinois Gas Company ("Nicor"). *AGL Resources Inc., Nicor Inc. and Northern Illinois Gas Company d/b/a Nicor Gas Company, Application for Approval of a Reorganization Pursuant to Section 7-204 of the Illinois Public Utilities Act*, ICC Docket No. 11-0046, Final Order of December 7, 2011 at 4 ("*Nicor Merger Order*"). In explaining why the merger in that case would not "diminish the utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service," the Commission stressed the significance of the integration planning process the AGL-Nicor joint applicants in that case conducted, stating

> That exception concerns the integration planning process the JA have conducted since the Reorganization was announced. Specifically, JA explain, several hundred employees of AGL, NI and NG have worked since January 2011 on understanding and meshing the "processes, structures and practices" of the merging

> entities. JA state that these integration planning endeavors "assess the current state for each and every area of the two companies." The JA further assert that their work on final operating plans will continue "until the Reorganization is closed." … JA underscore that approximately 3500 pages of documentation generated by JA's integration planners were submitted to Staff and presented during the evidentiary hearings in this case.

Id. at 11-12 (citations omitted). The Commission added:

> Beyond their evidence of prior and ongoing operating experience, and of specific pledges in support of future operations, the JA point to the ongoing process of integrating the merging entities, as described above. The fact that the JA are conducting this process with a significant cojmmitment of personnel is itself evidence that service quality will be maintained after reorganization. Indeed, it is, conceptually, exactly what needs to occur to achieve a smooth integration of the merging entities.

Id. at 13.

The Joint Applicants' evidence in this case is the antithesis of AGL/Nicor's presentation. Unlike AGL/Nicor:

- There is no evidence that the Joint Applicants have conducted "an integration planning process" since the proposed merger was announced.

- There is no evidence that the Joint Applicants have made an effort to mesh the "processes, structures and practices" of the merging entities.

- There is no evidence that the Joint Applicants endeavored to "assess the current state for each and every area of the two companies."

- There is no evidence that the Joint Applicants have committed significant personnel and effort to ensure that "service quality will be maintained" after the reorganization.

Besides the lack of transition plans, there is another important distinction between the record in this case and the record in the AGL/Nicor merger. In the earlier case, the Commission found that "[a]fter [the] merger, staffing levels will be maintained, generally by the same people in place now." *Id*. at 13-14. In response to the Commissioners' Data Requests in this case, the

JA were unable to identify the person or persons who would be responsible for overseeing the AMRP if the transaction is approved. *See*, *e.g.*, JA Responses at 3. The Joint Applicants were also unable to describe the process for evaluating whether PGL and Integrys employees currently overseeing the AMRP will be retained or replaced. *Id.* at 2-3; Tr. at 214.

The Joint Applicants' statements on this point contradict the Proposed Order's conclusion that the "evidence demonstrates that Peoples Gas and North Shore Gas will remain largely unchanged." At least with respect to Peoples Gas and the management and operation of the AMRP, according to the JA's verified statements, this cannot be known.

3. The Joint Applicants' Lack of a Transition Plan for Assuming Control of the Troubled Main Replacement Program is Especially Concerning Given the Current State of the Program.

The Joint Applicants lack of transition plan and its lackadaisical preparation is especially troubling given the current state of the AMRP. As the Commission knows, Liberty's Final Report regarding the AMRP was presented at an Open Meeting last week that included comments from Integrys and PGL executives, a Liberty auditor, the Commission Staff and formal statements from each commissioner. The Liberty Final Report is highly critical of Integrys's and Peoples Gas's management of the AMRP, finding serious problems with almost all aspects of the program. *See, e.g.,* Liberty Final Report at E-1 – E-3. In fact, *Crain's Chicago Business* described the Liberty Final Report as concluding that the AMRP is a "train wreck."[7] Among the Liberty auditors' findings are:

> ● Liberty's work through early fall 2014 did not find top leadership highly conversant with performance issues. We did find

[7] Steve Daniels, *Peoples Gas gas-main program a mess, auditor finds,* CRAIN'S CHICAGO BUSINESS, May 20, 2015, available at http://www.chicagobusiness.com/article/20150520/NEWS11/150529994/peoples-gas-gas-main-program-a-train-wreck-auditor-finds.

> attention to information about the program, but not under a structured and well-defined set of oversight, monitoring, and decision authority guidelines, information requirements, and points of control. Top-level oversight did not appear to operate under a regular, consistent schedule, or require or use key performance metrics." Liberty Final Report at B-14.
>
> ● "It has proven very challenging to gather statistics that profile main replacement progress over the years on a sufficiently comprehensive, detailed basis. Liberty asked for these statistics in repeated data requests, and discussed replacement progress during many interviews. However, data that Peoples Gas provided to date has been incomplete and difficult to reconcile." *Id*. at D-3.
>
> ● "Peoples Gas does not place a high priority on developing and maintaining a strong cost management culture. This lack of priority inevitably causes cost management capabilities to fall short. … Management operates under an overly narrow approach to budget monitoring, rather than robust cost management. Management has not provided proper tools and has left the cost management group understaffed and improperly organized. Roles and responsibilities lack definition and management has not communicated clear and comprehensive expectations." *Id*. at L-10.
>
> ● "Liberty found no clear indications that quality and completeness of data used for risk modeling and replacement prioritization are fundamentally unsound. A structured assessment of gaps and potential consequences is nevertheless warranted to assure that risk models continue to operate effectively. However, Peoples Gas does not operate a structured program for validating data after its entry into the systems that feed the prioritizing models. *Id*. at F-15.

These are but a few findings of a program that can be accurately described as in disarray.

4. The Joint Applicants' Lack of a Transition Plan for Assuming Control of the Troubled Main Replacement Program is Especially Concerning Given the Tremendous Cost of the Program.

The JA's failure to put transition plans in place to integrate WEC's and PGL's operations is especially disquieting because of the enormous cost implications of the AMRP. The AMRP

has had – and will continue to have – severe adverse consequences on Peoples Gas's customers' bills. The project's estimated lifetime costs have swelled from $2.2 billion in 2009 to $4.6 billion in May, 2013. AG Ex. 2.0 at 6:135-139. And, as pointed out by AG witness Coppola, Peoples Gas's May, 2013 estimate did not include the cost impact of new City of Chicago regulations that went into effect in January 2014 as well as other factors. *Id*. at 19-20:400-407. Thus, the $4.6 billion price tag is likely to increase.

The staggering costs of the AMRP have translated to higher rates for customers. Peoples Gas has stated that the AMRP was the main driver for its need for increased rates in each of its last three rate increase requests. AG Ex. 4.0 at 17:324-326. Mr. Coppola projected that the main replacement program alone, putting aside the effect of other rate drivers, will cause the average residential customer's base rates to double from "$555 annually to more than $1,100 per year by 2024." AG Ex. 2.0 at 7:159-161.

The accuracy of Mr. Coppola's prediction was borne out by Liberty auditors in the Final Audit Report, which states:

> The 2009 estimate of $2.63 billion grew to $4.45 billion in a 2012 estimate. The Company has announced no estimate since." Liberty Final Report at ES-2. In addition to being out of date, this 2012 estimate includes no consideration of inflation or contingency to cover unforeseen costs. When the Company finally completes a credible estimate it should move substantially higher in cost. Liberty learned in mid-2014 that the Company did not believe it had the modeling capability to produce a credible total program estimate. More than six months later, the program remains without that new estimate. Liberty does not know when the new estimate will emerge. Liberty considers AMRP program costs very likely to experience a material increase from the 2012 estimate, when AMRP management provides a new one.

Liberty Final Report at ES-2. Peoples Gas's dysfunctional operation of the AMRP and the JA's admitted lack of a transition plan for assuming control of the AMRP is almost a certain recipe for

even greater cost escalations. Under these circumstances, the Commission should conclude that the Joint Applicants have failed to ensure that that the proposed transaction "will not diminish the utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service." 220 ILCS 5/7-204(b)(1).

C. The Proposed Order's Statement that "the Conditions Agreed to by the Joint Applicants and Staff for the Implementation of the Recommendations from Liberty's Final Report and Cooperation with Staff and Liberty in the Verification Process will Protect the Interests of Ratepayers" Contradicts the Commission's 2012 Rate Case Order and Is Not Supported by the Record.

The Proposed Order concludes that "adoption of the conditions agreed to by the Joint Applicants and Staff for the implementation of the recommendations from Liberty's Final Report and cooperation with Staff and Liberty in the verification process will protect the interests of ratepayers pursuant to Section 7-204(b)(1)." PO at 30. It is not clear if the Proposed Order is referring to all of the conditions included in its Appendix A or if it is referring to some subset of those conditions, but whatever the intent, it is clear the conditions do not protect ratepayers' interests with respect to the AMRP and its impact on rates, safety and reliability.

In Peoples Gas's 2012 rate case, the Commission, relying on testimony submitted by Staff, found that the AMRP was beset with problems. In its Final Order in that case, the Commission stated:

> Part of the problem with the AMRP is the lack of detail. Staff examined Peoples' submissions to Staff DR ENG 2.12, which asked for a detailed explanation of its five-year plan for the AMRP, including all costs. They found: "There is no discussion of costs in the White Paper. There is no discussion of resource requirements or project management. The response to Staff DR ENG 2.12 states that the AMRP budget for 2013 is $220.75 million, but does not explain how Peoples arrived at that number and Attachment 01, the White Paper, does not address the issue either." *Id.* at 19. Additionally, Peoples also stated that they "have

> not determined the funding level past the year 2013". *Id.* Attachment 20.02.

ICC Docket Nos. 12-0511/0512 (cons.), North Shore Gas Co., Peoples Gas Light & Coke Co. – *Proposed Increase in Rates*, Order of June 18, 2013 at 61 ("2012 Rate Case Order"). The Commission was so concerned about the poor state of the program, it found

> For the reasons detailed in Staff witness Buxton's rebuttal testimony (Staff Ex. 20.0 at 23-24) and immediately above, this Commission adopts Staff's proposed two-phase investigation of the AMRP under Section 8-102 of the Act (220 ILCS 5/8-102) ending in a public document report. This Order directs Staff to conduct the tasks outlined on pages 3-8 of Staff Ex. 20.0 and directs Peoples to comply with the same.

Id.

Staff Exhibit 20.0 in the 2012 rate case was the Rebuttal testimony of Philliph Roy Buxton. In that testimony, Mr. Buxton described the audit process he recommended and which the Commission adopted, saying

> The Commission's consulting contract should include two phases. Phase I will be the investigation. Phase II will be a two-year verification period following the Phase I investigation and the engineering consultant who performs the investigation should work during this Phase II two-year period to verify that Peoples has implemented the recommendations from the Phase I investigation.

2012 Rate Case, Staff Ex. 20.0 at 3-4:56-60. Taken together, the Commission's Order and Mr. Buxton's testimony make clear that the Commission expected Peoples Gas would unequivocally implement "the recommendations from the Phase I investigation." Liberty's Final Report (and the Interim Report filed in January, 2015) are the result of the Commission's 2012 Rate Case Order.

Despite the Commission's evident intent, the Joint Applicants and Staff agreed to two conditions regarding whether the recommendations coming from the Liberty audit would, in fact,

be implemented. The Proposed Order endorses the JA's and Staff's conditions. These conditions, numbers 9 and 10 of Appendix A, subvert the Commission's 2012 Rate Case Order.

Condition No. 9 of Appendix A of the Proposed Order provides

> With respect to each recommendation contained in the final report of the investigation of Peoples Gas' AMRP completed at the direction of the Commission in its June 18, 2013 Order in Docket No. 12-0512 under the authority granted in Section 8-102 of the Act (220 ILCS 5/8-102), Peoples Gas shall evaluate the recommendation and implement it if the recommendation is possible to implement, practical and reasonable from the standpoint of stakeholders and Peoples Gas customers, and cost-effective. Implementing a recommendation means taking action per a recommendation. If Peoples Gas determines that a recommendation is not possible, practical, and reasonable, including that the recommendation would not be cost-effective or would require imprudent expenditures, Peoples Gas shall provide an explanation of Peoples Gas' determination with all necessary documentation and studies to demonstrate to the satisfaction of the Commission Staff that strict implementation of the recommendation is not possible, practical, or reasonable, along with an alternative plan to accomplish the goals of the recommendation as fully as is possible, practical, and reasonable. In the event that Peoples Gas and Commission Staff cannot reach agreement as to whether a recommendation should be implemented and/or how it should be implemented, Peoples Gas may file a petition to obtain the Commission's determination as to whether and/or how the recommendation is to be implemented.

Proposed Order, Appendix A at 2.

Condition No. 10 states

> Peoples Gas will cooperate fully with the Commission's Staff and consultants as they work to verify that Peoples Gas has implemented the recommendations in the final report on the Peoples Gas' AMRP investigation to the extent it is determined they should be implemented pursuant to Condition No. 9, above. Cooperation means to provide requested personnel who are reasonably involved in, connected to, and/or relevant to the AMRP and/or the Liberty audit for interviews in a timely manner in which the personnel interviewed shall provide, to the best of their ability,

> accurate and complete non-privileged information in response to questions asked, to answer written questions in a reasonable time with accurate and complete non-privileged information, and to make all non-privileged information, equipment, work sites, work forces and facilities available for inspection upon reasonable request.

Id.

These conditions *do not require* that Peoples Gas implement the recommendations made by the Liberty auditors, as the Commission concluded it should in its 2012 rate order. By its terms, Condition No. 9 allows Peoples Gas to reject a Liberty recommendation if it "determines that a recommendation is not possible, practical, and reasonable, including that the recommendation would not be cost-effective or would require imprudent expenditures." *Id*. While Condition No. 9 requires Peoples Gas to explain to Staff why it rejects a particular recommendation and to submit an alternative proposal to accomplish the goals of the recommendation, ultimately, if Staff and the utility cannot agree whether a recommendation should be implemented, Peoples Gas "*may* file a petition to obtain the Commission's determination as to whether and/or how the recommendation is to be implemented." *Id.* (emphasis added). In other words, Condition No. 9 gives Peoples Gas veto power over whether particular Liberty recommendations shall be implemented.

For its part, Condition No. 10 requires that Peoples Gas cooperate with Staff to ensure that the recommendations vetted by Peoples Gas in Condition No. 9 are implemented. *Id*. Condition No. 10 does not impose any obligations on Peoples Gas to implement the Liberty auditors' recommendations.

Conditions Nos. 9 and 10 cannot be squared with the Commission's Order in its 2012 Rate Case Order that Peoples Gas be required to implement "the recommendations from the Phase I investigation." Moreover, besides contradicting the Commission's Order, Conditions

Nos. 9 and 10 ultimately give Peoples Gas, not the Commission, ultimate say over whether particular Liberty recommendations will be implemented. The Proposed Order's finding that the conditions in its Appendix A "protect the interests of ratepayers" is not supported by any substantial evidence.

Proposed Language:

For the reasons stated above, the Commission Analysis and Conclusion section at pages 28-31 of the Proposed Order should be deleted. The following language should be inserted in its place.

> **Commission Analysis and Conclusion**
>
> Section 7-204(b) of the Public Utilities Act (the "Act") provides that no reorganization shall take place without prior Commission approval. 220 ILCS 5/7-204(b). Before approving any proposed reorganization, the Commission must find that: (1) the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
>
> In making this assessment, the Commission first turns to the JA's failure to conduct meaningful due diligence of Peopels Gas's AMRP. The concept of "due diligence" refers to the investigation that is initiated when one company is contemplating acquiring or merging with another company. Staff Ex. 2.0 at 18. According to Staff witness Lounsberry, "a thorough due diligence review would look into all aspects of a company, including financial records, personnel, legal and regulatory issues, physical assets, and operational procedures and costs." *Id.* at 18-19:452-454
>
> Whether WEC engaged in an adequate due diligence process has implications for not only shareholders, but utility customers, whose interest the Commission is charged with protecting. 220 ILCS 5/7-204(b)(1)-(7),(f). As Mr. Lounsberry noted, WEC's claims that the resulting combined company "will strengthen the WEC Energy Group's operating companies,

including the Gas Companies (PGL and NS), by integrating best practices in distribution operations, larger capital project management, gas supply, system reliability, and customer service" must be scrutinized by the Commission in light of evidence of whether the JA actually understood the capital investment commitments and problems of the companies they seek to acquire. Staff Ex. 2.0 at 19. Most importantly, for purposes of our evaluation required of the Commission under Section 7-204 of the Act, WEC's claim that PGL and NS service will not be negatively impacted by the proposed merger transition from Integrys to WEC ownership must be tested in light of evidence of what WEC understood about the operations of Peoples Gas and North Shore Gas when it made those commitments.

The Commission is troubled by the clear lack of due diligence on the part of the acquiring company, WEC. As the AG noted in its Reply Brief, it is undisputed fact that PGL has (1) the dubious distinction of having the highest rates in the state, (2) a problem-plagued AMRP, (3) an ongoing independent audit of the AMRP, and (4) a newly opened ICC docket investigating troubling whistle-blower allegations of fraud and mismanagement related to the AMRP (ICC Docket No. 15-0186). Yet, it appears that the Joint Applicants are either stunningly oblivious to these facts or, worse yet, disinterested in improving PGL operations as a condition of merger approval, as perhaps best highlighted in this statement from the JA's Brief, citing testimony from lead JA WEC witness Allen Leverett:

From the perspective of Peoples Gas' and North Shore's customers, the Reorganization will be seamless, as they will continue to receive high-quality, adequate, safe, and reliable gas service at the same cost as they did before the Reorganization. JA Ex. 1.0 (Leverett Direct) at 16:350-353; Leverett Reb., JA Ex. 6.0, 9:265-268.

JA IB at 4. Cross-examination of the lead WEC witness Leverett revealed a startling lack of knowledge about the basic operations of Peoples Gas. For example, Mr. Leverett knew few, if any details about PGL's AMRP, including information about the Company's Main Ranking Index ("MRI"), which is used to identify vulnerable mains in the distribution system. Tr. 182-237.

The Commission agrees with the AG that the proposed transaction must be rejected because it does not meet Section 7-204(b)(1)'s requirement that it "will not diminish the utility's

ability to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 7-204(b)(1). The Commission does not reach this decision lightly, but feels compelled to do so because of the remarkable lack of attention the proposed purchasers of the Utilities paid to Peoples Gas's accelerated main replacement program.

As discussed in our review of Section 7-204(b)(7) below, there is ample unrebutted evidence that the AMRP has had, and will continue to have, tremendous impacts on Peoples Gas's customers' bills. Moreover, in the 2012 Rate Case Order, the Commission found that the AMRP had many problems. We stated there that:

Part of the problem with the AMRP is the lack of detail. Staff examined Peoples' submissions to Staff DR ENG 2.12, which asked for a detailed explanation of its five-year plan for the AMRP, including all costs. They found: "There is no discussion of costs in the White Paper. There is no discussion of resource requirements or project management. The response to Staff DR ENG 2.12 states that the AMRP budget for 2013 is $220.75 million, but does not explain how Peoples arrived at that number and Attachment 01, the White Paper, does not address the issue either." *Id.* at 19. Additionally, Peoples also stated that they "have not determined the funding level past the year 2013". *Id.* Attachment 20.02.

2012 Rate Case Order at 61. Because of the problems identified in that Order, we ordered "a two-phase investigation of the AMRP [be conducted] under Section 8-102 of the Act (220 ILCS 5/8-102) ending in a public document report." *Id.*

The record shows that the problems with the AMRP continue. Among other problems, Mr. Coppola testified that a 2012 internal review of Peoples Gas's AMRP project management conducted by PWC "identified several deficiencies and 23 areas where improvements needed to be made." AG Ex. 2.0 at 16-17:341-342. Mr. Coppola pointed out that "as of October 2014, two years later, none of these improvements have been completed." *Id.* at 17:342-343. Mr. Coppola added that Peoples Gas and Integrys admit that they "have not formally defined a future state operating model or project delivery strategy in conjunction with the Rider QIP, or developed associated processes and controls." *Id.* at 17:350-353; AG Ex. 2.2. Mr. Coppola concluded that

> The scale of the AMRP seems to have overwhelmed the utility's resources. It has not proved itself capable of managing an accelerated main replacement program that is more than double in scope from what PGL was managing historically. The demands on the City of Chicago to respond to the increased activity of the AMRP also have taxed the resources of the City. The result has been huge cost overruns, delays in completing projects, and, in my view, a state of mass confusion and uncertainty as to whether or not the critical objectives of increasing safety, system reliability, operating cost reductions, and financial benefits to customers have actually been, or are likely to be accomplished.
>
> AG Ex. 2.0 at 20:410-418.[8]
>
> Despite the significant cost impacts and the problem-plagued history of the AMRP, the JA stated in response to the Commissioners' March 11, 2015 Data Requests that they the JA have no transition plan for assuming ownership of Peoples Gas and oversight of the AMRP. JA's Responses at 2-3. The Commissioners' question on this point sought this information "to ensure a seamless changeover that avoids any diminishment of the utility's ability to provide adequate, reliable, efficient, safe, and least-cost public service both leading up to and after closing the proposed reorganization, if approved." Notice of Commissioners' Data Request at 2. Rather than providing the information requested by the Commission, the Joint Applicants, as City/CUB witness William Cheaks, Jr. aptly put it, "describe[d] aspirational initiatives, not concrete commitments, and their compliance is not readily measurable or enforceable." City/CUB Ex. 11.0 at 2. Mr. Cheaks added that the Joint Applicants' responses "do not provide any plans or commitments to correct the specific deficiencies in AMRP." *Id.* at 1-2.
>
> The JA's lack of a transition plan is particularly concerning because in our Order in the last major energy merger case, we stressed the importance of the transition plans that the Illinois utility and its proposed purchaser had in place so that no "diminishment of the utility's ability to provide adequate, reliable, efficient, safe, and least-cost public utility service" would occur as a result of the acquisition. In that case, AGL proposed to purchase Nicor Inc., the parent company Nicor. Certain parties argued that

[8] City/CUB witness William Cheaks, Jr. and the Liberty auditors also identified numerous problems with the way Peoples Gas has conducted AMRP.

AGL/Nicor failed to meet the requirements of Section 7-204(b)(1) because their case "principally consists of recitations about NG's pre-merger service quality, AGL's track record with previous mergers, declarations of good intentions and a pledge not to reduce NG's aggregate staffing for three years." Nicor Merger Order at 11.

In our Order in that case, we concluded that the extensive integration planning process AGL/Nicor conducted addressed the legitimate concerns raised regarding the sufficiency of AGL/Nicor's evidentiary presentation. In particular, we stated:

That exception concerns the integration planning process the JA have conducted since the Reorganization was announced. Specifically, JA explain, several hundred employees of AGL, NI and NG have worked since January 2011 on understanding and meshing the "processes, structures and practices" of the merging entities. JA state that these integration planning endeavors "assess the current state for each and every area of the two companies." The JA further assert that their work on final operating plans will continue "until the Reorganization is closed." … JA underscore that approximately 3500 pages of documentation generated by JA's integration planners were submitted to Staff and presented during the evidentiary hearings in this case.

Id. at 11-12 (citations omitted). We added:

Beyond their evidence of prior and ongoing operating experience, and of specific pledges in support of future operations, the JA point to the ongoing process of integrating the merging entities, as described above. The fact that the JA are conducting this process with a significant commitment of personnel is itself evidence that service quality will be maintained after reorganization. Indeed, it is, conceptually, exactly what needs to occur to achieve a smooth integration of the merging entities.

Id. at 13.

Similar to the concerns raised in the AGL/Nicor case, the AG and City/CUB argued that the Joint Applicants failed to show that their plans regarding the AMRP satisfy the requirements of Section 7-204(b)(1). However, unlike the prior case, the Joint Applicants' evidence in this case is the antithesis of AGL/Nicor's presentation. Unlike AGL/Nicor,:

● There is no evidence that the Joint Applicants have conducted "an integration planning process" since the proposed merger was announced.

● There is no evidence that the Joint Applicants have made an effort to mesh the "processes, structures and practices" of the merging entities.

● There is no evidence that the Joint Applicants endeavored to "assess the current state for each and every area of the two companies."

● There is no evidence that the Joint Applicants have committed significant personnel and effort to ensure that "service quality will be maintained" after the reorganization.

In addition, to not having a transition plan, the Joint Applicants were unable to identify the person or persons who would be responsible for overseeing the AMRP if the transaction is approved. *See, e.g.*, JA's Responses at 3. The Joint Applicants were also unable to describe the process for evaluating whether PGL and Integrys employees currently overseeing the AMRP will be retained or replaced. *Id.* at 2-3; Tr. at 214. Each JA witness – whether a WEC or Integrys employee – who was asked about this important issue - testified that he did not know who would manage the program. *See* Tr. at 84, 256, 314.

In sum, the JA have shown a startling lack of concern about a multi-billion infrastructure program that has been beset with poor management from its inception and has resulted in substantial cost overruns that threaten to double a typical customer's base rates by 2024. AG Ex. 2.0 at 15:300-306. The Commission concludes that the Joint Applicants' seeming indifference regarding the current and future state of the AMRP requires that the Commission reject the proposed transaction because we find that the Joint Applicants did not prove that it "will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service." 220 ILCS 7-204(b)(1).

Finally, we are mindful of the AG's statement in their Initial Brief that the Commission cannot protect the interests of the utilities and their customers, as it is required to do under Sections 7-204, if it is investigating allegations of wrongdoing involving WEC and other members of the Joint Applicants in Docket No. 15-0186 while simultaneously moving ahead with a decision as to

> whether WEC should be permitted to acquire the Gas Companies in this docket. Moving forward to approve a merger under these circumstances is contrary to the ICC's obligation to protect the interests of utility customers. 220 ILCS 5/ 7-204(b),(f). Without having completed its investigation into the alleged wrongdoing, the Commission simply cannot be assured that the transition will not prolong or exacerbate dysfunction in PGL's AMRP. Indeed, the Commission has already asserted a connection between the merger and the investigation. Docket No. 15-0186, Corrected Initiating Order at 1.

[IF THE COMMISSION REJECTS THE AG'S POSITION THAT THE PROPOSED TRANSACTION SHOULD BE REJECTED BECAUSE IT FAILS TO MEET SECTION 7-204(b)(1), THEN, AT A MINIMUM, THE COMMISSION SHOULD ADOPT THE CONDITIONS AND THE AG-PROPOSED LANGUAGE, AS DISCUSSED BELOW.]

III. EXCEPTION No. 2: THE PROPOSED ORDER'S CONCLUSION THAT THE JOINT APPLICANTS SATISFIED SECTION 7-204(B)(7) IS IN ERROR; IT SHOULD BE REVERSED.

At pages 72-73, the Proposed Order finds that the proposed transaction satisfies Section 7-204(b)(7)'s requirement that it will not be likely to result in adverse rate impacts on retail customers. 220 ILCS 5/7-204(b)(7). The Proposed Order's conclusion is in error and should be reversed.

The Proposed Order does very little to address the arguments offered by the People regarding the likely effect of the proposed 2030 completion commitment (Condition No. 5) for the AMRP upon retail rates. The Proposed Order states only: "The capital expenditures of this program would be made whether or not the merger took place. Peoples Gas will have to continue on with this program and this cannot be considered as an adverse rate impact under this Section of the Act. This is not an increase related to the Reorganization." PO at 72.

While it is true that capital expenditures of the AMRP will be completed at some point in the future "whether or not the merger took place," the annual *pace* of work and the degree to which best practices are applied to management of the AMRP will determine the incremental related rates added to PGL customers' bills. The Liberty Final Report released on May 20, 2015 makes clear that Peoples Gas is now not on a pace to complete the AMRP, with the auditors concluding that "Extrapolating retirement data to date suggests that a significant delay past 2030 completion looms." Liberty Final Report at D-12, *see also* ES-1. Accelerating the pace of construction to complete the entire project by 2030 would necessarily increase the associated annual charges in customer rates, both through the QIP surcharge under Section 9-220.3 of the Act and through base-rate effects. If the reorganization (if consummated) includes a condition that causes the pace of AMRP work to accelerate, then the associated increase in rates will be intrinsically "related" to the reorganization. The People further explain below how the proposed 2030 completion condition would adversely impact customer rates. Additionally, the People explain how the general disarray in the AMRP, as documented by the recent Liberty Final Report, would be worsened by a transfer of control to Wisconsin Energy, with attendant adverse impacts on retail customers' rates.

A. The JA Propose to Increase the Pace of AMRP Construction Activity Far Above Trend In A Way That Will Increase Customer Rates.

The Proposed Order would adopt Condition No. 5, which would have the Joint Applicants commit as part of the proposed reorganization to complete the AMRP by 2030, with the caveat that the commitment would be conditioned on "appropriate cost recovery." *See* PO, Appendix A, Condition No. 5. However, this commitment would virtually ensure that PGL's rates will continue to increase at the alarming rate that persists currently – and will continue to

do so without any guarantee that the 2030 date will ensure the safety and integrity of the PGL distribution system.

When the Commission originally ordered the AMRP in PGL's 2009 rate case, Docket Nos. 09-0166/0167 (cons.) (the "2009 Rate Case"), the Commission first approved the institution of an infrastructure cost recovery rider known as Rider ICR for purposes of supporting an accelerated main replacement program for PGL's pipelines.[9] The Commission then approved PGL's proposed AMRP and required completion of the program by 2030 – an end date that PGL had proposed in an effort to secure approval of the rider.[10]

Since the Commission first issued that order more than five years ago, Peoples Gas has fallen badly behind schedule in its AMRP; PGL's current pace of main replacement puts it far off any putative 2030 completion date. AG witness Mr. Coppola, found in his Direct Testimony that, while the accelerated program approved in the 2009 Rate Case entailed[11] the installation of 164 miles of new coated steel and plastic pipe annually, it had installed only 103 miles in 2011, 136 miles in 2012, and 98 miles in 2013. AG Ex. 2.0 at 13-14:282-287. Mr. Coppola found that PGL's "inability to achieve the target installation of 164 miles of new main per year called for in the current program means that it will need to install even more in coming years in order to complete the program by 2030. This is not likely to occur. The result would certainly be further cost overruns that will drive the final cost of AMRP even higher." AG Ex. 2.0 at 30:600-604. The "further cost overruns" that Mr. Coppola alludes to are beyond the existing cost overruns that have inflated the estimated total construction cost of the AMRP from around $2.2 billion, as projected in the 2009 Rate Case, to around $4.6 billion in May, 2013. AG Ex. 2.0 at 19:394-399.

[9] Order, Docket Nos. 09-0166/0167 (cons.) at 194.

[10] *Id.* at 196.

[11] *See* AG Ex. 2.0 at 12:249 (citing Docket No. 09-0167, PGL Ex. SDM-1.15).

The Liberty Final Report confirmed Mr. Coppola's findings. *See* Liberty Final Report at D-10 – D-12.

The Commission's directive to have Peoples Gas complete the AMRP by 2030 was made only in the context of approving Rider ICR, as discussed above. Rider ICR was overturned by the Appellate Court in 2011. *People ex rel. Madigan v. Illinois Commerce Comm'n,* 2011 IL App (1st) 100654 (Sep. 30, 2011), at ¶ 42. The Commission recognized that the 2030 completion date was no longer operative in its next rate order for Peoples Gas, Docket Nos. 12-0511/0512 (cons.), in which it noted (relying on Staff witness Buxton's testimony) PGL's lack of progress on the AMRP[12], and it ordered an investigation to determine the "shortest reasonable time" in which the AMRP could be completed.[13] AG witness Coppola found in this proceeding that he has "seen no evidence in this case that leads me to believe that Mr. Buxton's conclusions are no longer true. The level of construction activity that Peoples Gas has undertaken to implement the AMRP is taxing its resources and capabilities." AG Ex. 4.0 at 31:591-593.

The record is clear that if Peoples Gas were to now follow through on a goal of completing the AMRP by 2030, as Condition No. 5 would direct, the effect on residential customer rates would be large and financially burdensome for Chicago residents. Calculations by AG witness Coppola in this case show that, if a 2030 completion date for the AMRP is assumed, the incremental contribution of AMRP costs – including rate base effects and Rider QIP recovery – to the typical residential customer bill will reach $529 by 2023 (up from $10 in

[12] The Commission's Order in that proceeding expressly relied on the testimony of Staff witness Buxton, who found that "[t]here is no reason for the Commission to believe that Peoples can complete its AMRP in 20 years as it convinced the Commission it should back in 2009." Staff Ex. 2.0 at 16:375-377; Order, Docket Nos. 12-0511/0512 (cons.), June 18, 2013, at 61 ("[f]or reasons detailed in Staff witness Buxton's rebuttal testimony . . . this Commission adopts Staff's proposed two-phase investigation of the AMRP").

[13] Order, Docket Nos. 12-0511/0512 (cons.), June 18, 2013, at 61.

2011 and $180 today). AG Ex. 2.0 at 28-29. For context, a typical residential customer's annual PGL bill as of 2013 includes around $555 related to base rates. *Id.* at 28:567-568. No JA witness refuted Mr. Coppola's findings.

In the four years since the Commission approved the AMRP in 2010, Peoples Gas has filed three base rate cases and received approval for increases in rates of $57.8 million[14], $59.8 million[15], and $71.1 million.[16] By far the largest driver of these rate increases has been the actual and forecasted capital investment and expenses tied to the Company's AMRP[17], due largely to the gross mismanagement of the project that has been meticulously documented by AG and City/CUB witnesses in this case and the Liberty Interim Audit Report and the Liberty Final Audit Report. Those facts are only made worse by the JA's admission that no transition plan exists for WEC to assume management of the AMRP operation.

The Proposed Order would resurrect a completion date that PGL has proven to be unachievable. Section 7-204(b)(7) of the Act is salient in evaluating whether the Commission should order such a commitment to a 2030 completion date. As Mr. Coppola's findings discussed above show, a re-commitment to the 2030 completion date would scale the AMRP far beyond PGL's capabilities, requiring it to expand its construction activities at a runaway pace that, if history is any guide, will lead to large cost overruns. As the Liberty Final Report clearly

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[14] ICC Docket Nos. 11-0280/0281 (cons.), Order of January 10, 2012 at 237.

[15] ICC Docket Nos. 12-0511/12-0512 (cons.), Order on Rehearing of December 18, 2013 at 21.

[16] ICC Docket Nos. 14-0224/0225 (cons.), Order of January 28, 2015.

[17] ICC Docket No. 11-0281, PGL Ex. 1.0 at 10-11; ICC Docket No. 12-0281, PGL Ex. 1.0 at 3. ("The largest cause of the increase is Peoples Gas' capital investments to improve the reliability of its gas distribution system and the quality of its services. The largest capital investments currently being made by Peoples Gas are for main replacement, in particular the replacement of cast iron and ductile iron gas main in the City of Chicago."); ICC Docket No. 14-0225, PGL Ex. 1.0 at 5. ("The costs that Peoples Gas incurs in order to serve its customers have increased significantly in recent years, due primarily to main replacement and other increased plant investment costs, and increased operating expenses, such as increased costs of pipeline safety and other compliance work.")

and unequivocably states[18], PGL is not currently conducting the AMRP on a pace anywhere close to completing the work by 2030 and has shown no plans in this proceeding for how it might cost-effectively accelerate its pace of activity commensurate with such an ambitious goal. It was, in part, PGL's poor track record over its first two years of AMRP activity in 2011 and 2012 that led the Commission to order the Liberty audit in its 2012 Rate Case order.[19] Thus, if this reorganization is approved and if it entails a re-commitment to the 2030 completion timeline, accelerating the pace of the project over that of the *status quo* would lead to severe rate impacts for retail customers, violating the reorganization approval standard of Section 7-204(b)(7).

Thus, a merger without a reassessment of what AMRP pace is achievable would diminish the provision of least-cost service and would have adverse retail rate impacts; the Commission should not approve such a merger framework. The 2030 date was originally selected somewhat arbitrarily in the 2009 Rate Case without any consideration of optimizing safety or minimizing the effect on customer rates. Staff witness Lounsberry admitted during cross-examination that neither he nor anyone at Staff had conducted an analysis of how the 2030 completion date would impact customer rates. Tr. at 566:1-567:2. A resurrection of the 2030 AMRP completion date without a realistic assessment of whether that date is achievable would have clear, adverse rate impacts on PGL retail customers – a phenomenon Section 7-204(b)(7) prohibits for any merger applicant.

[18] Liberty Final Report at ES-1.

[19] The Commission's 2012 Rate Case Order based its decision to order the AMRP audit on the "reasons detailed in Staff witness Buxton's rebuttal testimony . . . immediately above"; the summary of Mr. Buxton's testimony immediately above in the order's Analysis and Conclusion section included his point that, as of the time of that 2012 Rate Case, the AMRP was behind schedule. Order, Docket Nos. 12-0511/0512 (cons.), June 18, 2013, at 61.

B. The Joint Applicants' Poorly-Defined Request for "Appropriate Cost Recovery" Is a Harbinger of the Rate Shock To Come Should the Commission Approve Their Proposed AMRP Completion Date.

JA witness Schott stated in his Surrebuttal testimony that "appropriate cost recovery" is "linked" to PGL's intention to complete the AMRP by 2030 (JA Ex. 18.0 at 3:47-49). JA witness Mr. Leverett added the identical caveat of "appropriate cost recovery" in his Surrebuttal testimony. JA Ex. 15.0 at 9:182-184. The Proposed Order would adopt such a caveat in Condition No. 5. The People sought to clarify the meaning of "appropriate cost recovery" through discovery and cross-examination to identify exactly what circumstances would cause the JA's proposed commitment to be effective. In discovery, Mr. Schott stated that, after Rider QIP[20] expires after 2023 pursuant to Section 9-220.3 of the Act, appropriate cost recovery could come through rate case filings, but that "[w]hat the appropriate cost recovery is in future years remains to be seen." AG Cross Ex. 1 at 1. Invited to clarify the precise type of rate case treatment he was referring to, Mr. Schott stated in cross-examination only that he did not feel comfortable answering a question about events nine years hence. Tr. at 98:18-99:3. Mr. Schott mentioned several factors such as "the amount of dollars to be spent, the current regulatory environment, the current financial environment, [and] the current cost projections at the time" (Tr. at 100:2-5) that would inform the definition of "appropriate" cost recovery, but declined to "speculate" as to what "appropriate" cost recovery through a Commission rate order might look like. Tr. at 100:5-8.

Putting aside the inappropriateness of saddling Peoples Gas's ratepayers with constant rate increases in order to achieve the unsupported 2030 deadline, the Commission should not

[20] PGL's Rider QIP, approved by the Commission in 2014 pursuant to Section 9-220.3 of the Act, permits Peoples Gas to recover a return of and on qualifying infrastructure investment, including its AMRP investments, through a monthly surcharge on customer bills. 220 ILCS 5/9-220.3.

approve a merger with an ambiguous condition whose predicate has not been clearly defined. The Joint Applicants appear to be deliberately leaving the meaning of "appropriate cost recovery" unclear so that they may escape the obligation of the now-discredited 2030 completion date at a future time of their choosing if a Commission rate order is not to their liking. The JA's unwavering emphasis on gaining "appropriate" cost recovery for AMRP activity suggests that they value the 2030 date not because it is important to optimize public safety, but only to the extent that adding this condition to the merger can improve their profitability. Meanwhile, the extreme acceleration of construction activity within the next five to eight years that would be required to catch up with a 2030 completion date would cause large adverse retail rate impacts – all with an uncertain public benefit. The JA's poorly-clarified qualifications for meeting the targeted date would make a 2030 timetable highly unpredictable. The Commission must not impose such a one-sided condition that places all of the financial risk upon ratepayers and relieves PGL of any risk associated with the acceleration – particularly in light of the lack of any tangible, safety-related justification for that particular date and the resulting rate shock that promises to accompany efforts to meet that target.

C. The Evidence Shows PGL Has Not and Cannot Keep Pace With the Proposed Completion Date, and the Commission Should Order PGL to Run the AMRP Consistent With Its Capabilities.

The evidence is clear that Peoples Gas simply has been unable to manage an AMRP with a 2030 completion date, and a condition in this proceeding that requires a resumption of that goal would violate the statutory requirement of avoiding adverse retail rate impacts. 220 ILCS 5/7-204(b)(7). AG witness Coppola concluded in his Direct testimony that "[t]he scale of the AMRP seems to have overwhelmed the utility's resources." AG Ex. 2.0 at 20:410. After reviewing the Liberty Interim Report, Mr. Coppola concluded that the "lack of proper on-site management of

the program, the hesitancy on the part of senior level management to make decisions about the organization and structural changes to the program, compounded by cost overruns and delays in completing scheduled projects, all point to an inability to complete the AMRP by 2030." AG Ex. 5.0 (Coppola Supplemental Direct) at 15:317-321.

Mr. Coppola testified that "[t]he Joint Applicants, particularly Wisconsin Energy, if the merger is approved, face a monumental task to get the program on the right footing, and make up for the lost ground identified in the Interim Audit Report. Continuing to believe that 2030 is an achievable completion date is neither realistic nor advisable in achieving a cost-effective implementation, regardless of any claims the Joint Applicants might make that they will endeavor to do so." *Id.* at 15:322-329. He also observed that holding the Joint Applicants to a 2030 completion date for the AMRP will not "achieve completing the program 'at the lowest reasonable cost' – one of the listed goals of the Liberty audit examination." *Id.* As Mr. Coppola noted in testimony, the Liberty Interim Report does not mention anywhere in its pages a goal of completing the AMRP by 2030. AG Ex. 5.0 at 15:333-16:334. Neither Liberty's Interim Report nor its Final Report recommended any acceleration of the AMRP to a 2030 completion timeline[21], and the Commission should not second-guess the auditors by imposing such a condition.

Staff witness Stoller filed Supplemental Reply testimony solely to claim that "[i]t is irrelevant that Liberty did not mention the end date of AMRP in its Interim Report." Staff Ex. 15.0 at 2:18-19. Mr. Stoller claimed that Liberty's task in its ongoing audit is, *inter alia*, "to

[21] "Losing a year to schedule in only four years of operation makes it appropriate to question the Company's current ability to complete high-risk pipe replacement by, or even close to, 2030. The lack of sufficient information . . . precludes the ability for Liberty to offer a determination of the likely schedule and completion date for the AMRP." Liberty Final Report at ES-1 - ES-2.

make recommendations regarding how [PGL] can get back on schedule to complete AMRP by 2030." However, the evidence simply does not support Mr. Stoller's claim that Liberty was hired by the Commission with a goal of moving the AMRP toward completion on that particular date. As Mr. Stoller admitted in a discovery response, the Request for Proposals ("RFP") that initiated the audit now being conducted by Liberty provided that the audit should "help ensure that Peoples completes its AMRP in the shortest reasonable time and at the lowest reasonable cost," but did not ask the prospective auditor to consider the constraint that the "shortest reasonable time" cannot end after 2030. AG Cross Ex. 12 at 1. Mr. Stoller also admitted in discovery (AG Cross Ex. 12 at 2) that the "shortest reasonable time" and "reasonable cost" language from the RFP echoes recommendations made in the 2012 Rate Case by Staff witness Buxton, on which the Commission based its final directive to initiate the AMRP audit. (2012 Rate Case Order at 61.) Moreover, Mr. Stoller admitted that he does not deem it impossible that Liberty might conclude that the "shortest reasonable time" for completion of the AMRP is a time frame ending after 2030, and he also admitted that Liberty's task of determining the AMRP's likely completion date was not constrained by any condition that the likely completion date could not be after 2030 (AG Cross Ex. 12 at 1, 4); he also admitted that nowhere in the RFP that initiated the audit, other than one reference to a calculation of a pipe replacement pace for a 2030 completion, is there any reference to a 2030 completion date or a 20-year timeline, or to the aforementioned pipe replacement pace calculation. AG Cross Ex. 12 at 3.

D. Neither Staff Nor the JA Conducted Any Rate Impact Analysis Related to the AMRP Completion Date.

While the Joint Applicants have stated repeatedly that they will commit to complete the AMRP by 2030 (with "appropriate cost recovery"), they have not explained how they matched

that goal with the Section 7-204 statutory standards discussed above. As JA witness Mr. Schott agreed in cross-examination, an effectively managed AMRP should minimize the impact on customer rates. Tr. at 95:5-11. Mr. Schott, Chief Financial Officer of Integrys Energy Group, stated during cross-examination that (using his example) near-term customer rates would be lower when $100 million is prudently spent in a given year on capital expenditures, compared to capital expenditure of $200 million (Tr. at 104:19-105:10), and he agreed generally that the annual rate of AMRP investment increases customer rates in the near term. Tr. at 105:16-106:1.

Despite this correlation, JA witness Mr. Lauber, who is Vice President and Treasurer of WEC, stated during cross-examination that WEC did not ask PGL or Integrys to calculate a rate impact associated with different AMRP completion timelines. Tr. at 462:9-14. Similarly, Mr. Leverett, President of WEC, stated that neither he nor any other JA witness has performed any recent analysis or assessment to conclude that the 2030 completion date is still feasible and achievable in a cost-effective manner for ratepayers. Tr. at 221:2-7. Additionally, as Mr. Coppola found, "there is no evidence that the Joint Applicants have performed the due diligence necessary to understand the infrastructure investment rate involved in achieving that [2030] deadline [and] the impact on customer rate." *Id.* at 30:604-606.

Staff witness Lounsberry similarly agreed during cross-examination that his recommendation on page 15 of his Rebuttal Testimony (Staff Ex. 9.0) that the Joint Applicants should be required as a merger condition to complete the AMRP by 2030 was based solely on his reading of the 2009 Rate Case order and not on any analysis of customer rate impacts.[22] Tr. at

[22] A failure to investigate rate impacts is not the only infirmity with Mr. Lounsberry's recommendation. Mr. Lounsberry admitted in cross-examination that the ICC Staff did not perform any safety or engineering studies to arrive at its recommendation in the 2009 Rate Case or in *this* case that a 2030 completion date was appropriate. Tr. at 569:8-18. He also admitted that Staff has not conducted any analysis or investigation to determine that 2030 is an optimal completion date in terms of project management issues. Tr. at 569:19:570:2.

566:1-567:2. Mr. Stoller also admitted in a discovery response that he did not consider rate impacts to PGL ratepayers associated with his recommendation to re-commit to the 2030 completion date ordered by the Commission in Docket Nos. 09-0166/0167 (cons.). AG Cross Ex. 13. Furthermore, Mr. Lounsberry similarly admitted in cross-examination that neither he nor any Staff witness has conducted any analysis as to whether the proposed merger could impact AMRP management in a way that could affect customer rates, and he also conceded that neither he nor anyone in the ICC Staff has conducted any independent analysis of the appropriate completion date for the AMRP. Tr. at 516:17-20. Indeed, no witness in this case has attempted to show that, even under the limited criteria offered by PGL witness Marano in the 2009 Rate Case (discussed below), 2030 is still a manageable or appropriate completion date. In light of the General Assembly's statutory mandate in Section 7-204(b)(7) of the Act to consider retail rate impacts, it is difficult to see how the Commission could approve this proposed reorganization with a 2030 AMRP completion condition when the *only* rate impact study related to the proposed condition, presented by AG witness Coppola, suggests that customer rates would roughly double, before considering any non-AMRP factors that inform the setting of rates, within the next decade if the 2030 completion date is required.

E. The Commission Did Not Choose A 2030 Completion Date In The 2009 Rate Case As A Pipeline Safety Optimization Strategy.

As JA witness Schott observed in his Surrebuttal Testimony, the Commission's decision authorizing the AMRP with a 2030 targeted completion date in its 2009 Rate Case was based on the testimony of PGL witness Mr. Salvatore Marano, who provided *cost-benefit* analyses for a possible accelerated main replacement program using three possible completion dates: 2025, 2030, and 2035 – and then from those alternatives concluded that a 2030 completion date was

most feasible. JA Ex. 18.0 at 3:52-57. A careful look at the Direct Testimony filed by Mr. Marano in the 2009 Rate Case regarding a proposed 2030 completion date shows that he focused *only* on cost-benefit analyses and did not consider customer rate impacts, pipeline safety issues, or the Company's ability to manage an accelerated program. AG Ex. 4.0 at 30:577-579; AG Cross Exhibit 2 at 51-59.[23,24] In light of the Commission's decision calculus from the 2009 Rate Case, AG witness Coppola correctly noted in his Rebuttal testimony that there is nothing "magical or critical" about a 2030 completion date. AG Ex. 4.0 at 30:577.

While Mr. Stoller alleged in his Rebuttal testimony that "AMRP was not ordered by the Commission for reasons other than pipeline safety" (Staff Ex. 8.0 at 8:153), he later admitted in cross-examination that he was not a Commissioner at the time of the 2009 Rate Case order and agreed that he is not suggesting that he is a legal expert in the interpretation of prior ICC orders. Tr. at 500:8-501:3. In fact, as Mr. Stoller agreed during cross-examination, the Commission approved Rider ICR, which enabled PGL to collect a return of and on AMRP investment over a designated dollar amount each year between rate cases, at the same time as it ordered a 2030 completion date in the Company's 2009 Rate Case order. Tr. at 504:12-20. Mr. Stoller also agreed (Tr. at 506:21) that the Commission's 2009 Rate Case order expressly rejected "Staff's persistent claim that Rider ICR is not needed."[25] The Commission's 2009 Rate Case order speaks for itself and clearly demonstrates that it approved the 2030 AMRP completion date in the context of also approving Rider ICR. As Mr. Stoller agreed, after the Illinois Appellate Court reversed the Commission's approval of Rider ICR in September 2011, Peoples Gas was

[23] The cited pages represent pages 49-57 of PGL Ex. SDM-1.0 Rev. from Docket No. 09-0167.

[24] Page 51 of the cross exhibit (page 49 of the Marano testimony) at line 948 poses the question: "How was the basis for the proposed accelerated replacement period determined?" The discussion and analyses on the following eight pages focus only on purported cost savings.

[25] Order, Docket Nos. 09-0166/0167 (cons.), Jan. 21, 2010, at 194.

unable to collect a return of and on AMRP investment between rate cases until the time in 2014 when Rider QIP was initiated pursuant to the new Section 9-220.3 of the Act. Tr. at 507-508.

Mr. Stoller's Direct Testimony from the 2009 Rate Case shows that the genesis of his support for a 2030 completion date was nuanced and based on the expectation of further Commission review. There, Mr. Stoller recommended that (1) Peoples Gas should be ordered to conduct an in-depth study of the (then-proposed) AMRP since the program appears to be necessary for the long-term safety of PGL's system; (2) PGL should present the Commission with an AMRP implementation plan in a separate docket, with the plan to be analyzed by an independent consultant, and obtain Commission approval before commencing the AMRP; and (3) following Commission approval, PGL should be ordered to return to the Commission with updated analysis of the AMRP every three years. Tr. at 511-512. The Commission looked to Mr. Stoller's recommendations in the 2009 Rate Case in formulating its conclusion in that case that the AMRP should be concluded by 2030.[26] However, as Mr. Stoller admitted under cross-examination in this case, the Commission never adopted his second or third recommendation from his 2009 Rate Case testimony. Tr. at 513. It is not clear how Mr. Stoller's 2030 completion date recommendation is still tenable when the Commission never executed the second and third steps that Mr. Stoller recommended in his 2009 Rate Case testimony. It is also noteworthy that Mr. Stoller admitted in this case that he performed no analysis of the impact on customer rates at the time of the 2009 Rate Case, and he did not know if any other Staff member did. Tr. at 517:17-21.

[26] "The testimony of Mr. Stoller confirms for the Commission what it should do in terms of Rider ICR." Order, Docket Nos. 09-0166/0167, Jan. 21, 2010, at 194.

Mr. Stoller's support for the 2030 completion date is complicated by looking to his statements in the evidentiary hearing of Docket Nos. 09-0166/0167 (cons.), where he admitted that 2030 is not a "magic bullet" and is not necessarily the year that the AMRP must be completed. AG Cross Exhibit 15 at 15; Tr. at 514:10-20. Mr. Stoller admitted in that 2009 hearing that no evidence in that 2009 Rate Case supported the notion that the AMRP must be completed by 2030 (AG Cross Exhibit 15 at 15; Tr. at 515:1-4) and that he also admitted that he did not "know if it's 2029 or 2030 or 2031." AG Cross Exhibit 15 at 15; Tr. at 515:17-22. Finally, Mr. Stoller also admitted in that 2009 hearing that the issue of a particular completion date would be something that should be addressed in the future ICC proceeding that he had recommended in his Direct testimony in that case. AG Cross Exhibit 15 at 15; Tr. at 516: 3-10. If the Commission wished to rely in *this* proceeding on Mr. Stoller's position as it determines an appropriate AMRP completion date, Mr. Stoller's statements under cross-examination and re-direct examination in the 2009 Rate Case do not provide sturdy ground for a finding that a 2030 completion date is imperative. In short, neither Mr. Stoller nor Mr. Lounsberry were able to justify the inclusion of a 2030 AMRP completion date as a condition to the requested merger.

The AG's expert witness in this proceeding, Mr. Coppola, recommended scaling the pace and scope of AMRP activity to a level that, *inter alia*, targets high-priority and high-risk segments (AG Ex. 4.0 at 35:678-679), in light of evidence that PGL has not been historically tracking the risk level (known as the Main Rank Index) of each of its mains replaced (AG Ex. 4.0 at 9:138-10:162, 22:431-441). This merger condition would address safety needs far more effectively than blithely instructing PGL to accelerate its AMRP to a timeline determined without any reference to safety considerations.

F. The JA's Failure to Make a Meaningful Engagement With the AMRP's Significant Issues Will Lead to Adverse Rate Impacts for Peoples Gas's Customers.

Because of their failure to engage meaningfully – if at all – regarding the fate of the AMRP, the Joint Applicants failed to make the necessary showing under Section 7-204(b)(7) that the proposed reorganization will not have adverse retail rate impacts. As described above, the AMRP has had – and will continue to have – severe adverse consequences on Peoples Gas's customers' bills. Peoples Gas has stated that the AMRP was the main driver for its need for increased rates in each of its last two rate increase requests. AG Ex. 4.0 at 17:324-326.

The Joint Applicants' indifferent attitude regarding the AMRP may likely lead to even greater increases in program costs, and, therefore, rate increases, than those estimated by Mr. Coppola. The Joint Applicants' surprising lack of concern regarding the problem-plagued main replacement program includes the following failings:

- WEC did not conduct a meaningful due diligence analysis of the AMRP.

- As admitted in their responses to the Commissioners' March 11, 2015 Data Requests, the Joint Applicants have not developed a transition plan for WEC to take over control of the AMRP. JA Responses at 2.

- The JA do not know who will be responsible for managing the AMRP if the merger is approved. *See*, *e.g.*, *id*. at 3.

- In their March 11, 2015 Data Requests, the Commissioners asked whether any Peoples Gas or Integrys employees "with extensive AMRP management experience" would be retained. Commissioners' Data Requests at 2. The JA were unable to provide a direct response to the Commissioners' question, nor were they able to explain the process for evaluating whether PGL and Integrys employees currently overseeing the AMRP will be retained or replaced. Tr. at 214; JA Responses at 2-3.

These are a few examples of the seeming lack of interest the JA have displayed in the AMRP. The first two questions of the Commissioners' March 11, 2015 Data Requests sought information that they believed necessary "to ensure a seamless changeover that avoids any

diminishment of the utility's ability to provide adequate, reliable, efficient, safe, and least-cost public service both leading up to and after closing the proposed reorganization, if approved." Notice of Commissioners' Data Request at 2. The Joint Applicants' failure to provide meaningful, direct answers to these questions should give the Commission significant pause.

In addition to the serious questions raised regarding whether the proposed merger meets the requirement of Section 7-204(b)(7) because of the JA's lack of focus on, and plans for, the AMRP, Staff witness Michael McNally conducted an analysis of the merger's potential impact on the Companies' cost of capital. Mr. McNally testified that "[a]s a consequence of the proposed reorganization, the Gas Companies' credit ratings have been assigned a negative rating outlook from [Standard & Poor's]" (Staff Ex. 7.0 at 9:185-187) and that "[a]ll else equal, lower credit ratings would lead to higher debt costs, which in turn, would lead to higher equity costs as well, since higher debt costs increase financial risk." *Id*. at 10:217-219. Although Mr. McNally proposed certain conditions to mitigate potential increases in the utilities' capital costs, he concluded that "it is not clear that the proposed reorganization will satisfy the requirement set forth in Section 7-204(b)(7) of the Act since it does not identify an acceptable means for eliminating any adverse rate impacts of the potential declines in the Gas Companies' credit ratings on their costs of capital." *Id*. at 17:392-395.

Finally, neither the JA nor Staff considered the impact of the JA's passive approach towards the AMRP in their respective assertions that the proposed transaction meets Section 7-204(b)(7)'s requirement that the Commission find that any proposed reorganization "is not likely to result in any adverse rate impacts on retail customers." Staff's Section 7-204(b)(7) analysis focuses solely on the impact the proposed merger would have on Peoples Gas's and North Shore's respective costs of capital. The Joint Applicants mention the potential impacts on the

utilities' respective costs of capital as well as their agreement to not seek recovery of (1) any portion of the acquisition associated with the transaction and (2) the "transaction costs" incurred to accomplish the merger. Whatever the merits of JA's and Staff's arguments on those points, neither party mentioned the flawed AMRP and the impact it will have on rates if the transaction were approved. As much as the Joint Applicants may prefer to ignore the rate impacts of the AMRP, the Commission must account for adverse rate impacts the troubled program is likely to have on Peoples Gas's customers' bills if the proposed merger is approved.

In sum, the JA's remarkable lack of detail as to how they plan to conduct a seamless transition to managing the troubled AMRP demonstrate that the Joint Applicants have not proved that the proposed reorganization "is not likely to result in any adverse rate impacts for retail customers." 220 ILCS 5/7-204(b)(7).

* * *

In summary, as Mr. Coppola stated in his Rebuttal testimony, a 20-year program at the time of the 2009 Rate Case "seemed like a reasonable timeframe," but "now seems unrealistic and will likely cause further program cost overruns." AG Ex. 4.0 at 33:643-645. In light of the severe adverse rate impacts forecasted by Mr. Coppola (and undisputed by other parties), the absence of rate impact analyses from other parties, PGL's inability to date to manage the program on a 20-year timeline, PGL's refusal to make an unequivocal commitment to the 2030 completion date without self-serving caveats, WEC's lack of interest in doing necessary due diligence and formulating a seamless transition plan as to the AMRP's problems, and Mr. McNally's testimony regarding the proposed transaction's potential impact on the Companies' cost of capital, the Commission should reject the merger as proposed by the Joint Applicants, because such commitment would lead to rate shock for PGL's customers, in clear violation of

Section 7-204(b)(7) of the Act. Alternatively, if the Commission were to choose to approve the merger, it must reject the proposed 2030 completion condition.

Proposed Language:

For the reasons stated above, the second paragraph of the Commission Analysis and Conclusion section on page 72 of the Proposed Order should be deleted. The following language should be inserted in its place:

> Although this Commission directed Peoples Gas to complete the AMRP by 2030 as part of the Order in Docket Nos. 09-0166/0167 (cons.), that directive came in the context of the Commission's simultaneous approval of Rider ICR. When Rider ICR was overturned by the Appellate Court in 2011, the directive to finish the AMRP on a 20-year time frame lost clarity, as the Commission indicated in its Order in Docket Nos. 12-0511/0512 (cons). The evidence advanced by AG witness Coppola shows that Peoples Gas is not now on a pace to complete the AMRP by the year 2030 – but that accelerating AMRP activities would, in fact, cause a significant increase in retail customer rates, in violation of Section 7-204(b)(7) of the Act. Thus, before deciding whether Section 7-204(b)(7) is satisfied, the Commission decides as an initial matter that the proposal by Staff and by the Joint Applicants to include a re-commitment to a 2030 completion date as a condition of reorganization cannot be adopted.

Additionally, the final paragraph of the Commission Analysis and Conclusion section on page 73 of the Proposed Order should be deleted, and the following language inserted in its place:

> However, notwithstanding all of the above, the recent Final Audit Report by Liberty has shown the AMRP to be a project badly unmoored; costs (and the associated customer rates) have soared, and Peoples Gas has shown little ability to control those costs. The Commission finds that the limited analysis done by Staff and the JA – focusing primarily on the proposed transaction's effect on Peoples Gas's and North Shore's respective costs of capital – is insufficient. The recent and significantly large rate increases for Peoples Gas customers would likely be worsened by a prospective takeover of PGL operations by Wisconsin Energy. The proposed

> transfer of control over the AMRP would occur at a sensitive time in the AMRP's improvement process, but Wisconsin Energy has shown no specific plans for continuing current AMRP improvement initiatives, or made any commitments to retaining AMRP managers. The Commission finds that WEC's absence of any transition plans for the troubled AMRP suggest that it may allow cost overruns in the program to balloon beyond recent trends.
>
> Additionally, the Commission is mindful of the AG's statement in its Initial Brief that the Commission cannot protect the interests of the utilities and their customers, as it is required to do under Sections 7-204, if it is investigating allegations of wrongdoing involving WEC and other members of the Joint Applicants in Docket No. 15-0186 while simultaneously moving ahead with a decision as to whether WEC should be permitted to acquire the Gas Companies in this docket. Without having completed its investigation into the alleged wrongdoing, the Commission simply cannot be assured that the transition will not prolong or exacerbate dysfunction in PGL's AMRP. Indeed, the Commission has already asserted a connection between the merger and the investigation. Docket No. 15-0186, Corrected Initiating Order at 1. Thus, the Commission cannot find that the proposed reorganization is not likely to result in an adverse effect on customer rates, within the meaning of Section 7-204(b)(7) of the Act.

[IF THE COMMISSION REJECTS THE AG'S POSITION THAT THE PROPOSED TRANSACTION SHOULD BE REJECTED BECAUSE IT FAILS TO MEET SECTION 7-204(b)(1), THEN, AT A MINIMUM, THE COMMISSION SHOULD ADOPT THE AG-PROPOSED LANGUAGE AND CONDITIONS DISCUSSED BELOW.]

IV. EXCEPTION No. 3 – THE PROPOSED ORDER HAS IMPROPERLY INTERPRETED AND APPLIED SECTION 7-204(F) OF THE ACT.

A. Merger Conditions Need Not Be Tied To 7-204(b) Requirements.

As noted above, the Commission has an obligation under Section 7-204(f) of the Act to impose the conditions that "in its judgment, are necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f). The Proposed Order recognizes this obligation,

correctly rejecting the JAs arguments that would render subsection (f) meaningless, and notes at pages 12-13:

> …(S)ubsection 7-204(f) provides that "[i]n approving any proposed reorganization pursuant to this Section, the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f). *Subsection 7-204(f) does not exempt any component of utility operations from the Commission's consideration of the proposed Reorganization.*
>
> The Commission finds that Section 7-204(f) conditions can be used to ensure that the Section 7-204(b)(1)-(7) requirements are, in fact, satisfied post-merger. *Section 7-204(f) also provides the Commission with an obligation to impose conditions that it believes are necessary and appropriate to protect the public interest.* The Joint Applicants' interpretation of the statute's requirements reads out that portion of Section 7-204 and is contrary to the Commission's interpretation of the Act. *The Commission therefore concludes that the power to impose merger conditions extends to all aspects of a utility's operation.*

PO at 11 (emphasis added). The language of the Act and this finding could not be clearer: approval of the proposed merger is subject to any kind of (lawful) condition or requirement related to any aspect of the utility's operations that the Commission believes is necessary to protect the public interest.

Notwithstanding this conclusion, the Proposed Order inconsistently concludes later in the document -- in its analysis of whether the JA satisfied Section 7-204(b)(1) and 7-204(b)(7) of the Act, as well as its discussion of AG/City/CUB-proposed merger conditions -- that "this is not the proper forum for either evaluating or implementing specific corrective action with respect to the AMRP, or examining the ongoing Liberty investigation." *See, e.g.,* PO at 29. The Proposed Order cites three reasons for rejecting any AMRP-related conditions outside of the heavily-conditioned agreement between the JA and ICC Staff, to "evaluate the [Liberty audit]

recommendation and implement it if the recommendation is possible to implement, practical and reasonable from the standpoint of stakeholders and Peoples Gas customers, and cost-effective." They are:

> (1) completion of the AMRP "is necessary for Peoples Gas whether the Reorganization is approved or not[27]";
>
> (2) imposing additional conditions could conflict with the findings of the Liberty auditors in its Final Audit Report[28]; and
>
> (3) a Section 7-204 proceeding is not the proper place for attempting to determine and implement improvements or enhancements to a utility's operations or performance, given that the standard we are to apply under the statute is to determine whether the reorganization will negatively impact – not improve – a utility[29].

This third rationale, in particular, seems to suggest that the Commission can only attach conditions to a merger approval that are specifically tied to Section 7-204(b)(1)-(7) requirements – a conclusion that betrays a fundamental misunderstanding of the purpose and value of Section 7-204(f) – notwithstanding its earlier conclusion that this subsection cannot be rendered meaningless.

Even if the Proposed Order and the Commission conclude that the proposed merger "will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service" (7-204(b)(1) and that approval of the merger "is not likely to result in any adverse rate impacts on retail customers" (7-204(b)(7)), notwithstanding the evidence to the contrary, those conclusions in and of themselves do not preclude Commission adoption of conditions to help ensure that those findings are met *or other conditions that are not tied to a specific*

[27] PO at 30.

[28] PO at 30.

[29] PO at 29.

subsection under Section 7-204(b). With the addition of subsection 7-204(f), the General Assembly granted the Commission broad authority to impose conditions of any kind (assuming they are permitted under law) that "in its judgment are necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f).

While Section 7-204(b) outlines the minimum service, safety and rate impact requirements that the Commission must conclude have been satisfied before approving a merger, Section 7-204(f) creates a further obligation on the Commission to condition its merger approval on commitments that it believes are necessary to protect the public interest. Moreover, while subsection 7-204(b)(1)-(7) makes clear that the proposed acquisition does not have to improve service to win merger approval, the broad authority provided to the Commission through subsection (f) *can include* the attachment of conditions that *are designed to improve* or, in the instant case, at least not permit further degradation of service that already exists because of the uncertainties that surround the merger transition in order to protect PGL customers' interests.

This interpretation of Section 7-204(f) is consistent with the basic precepts of statutory interpretation. Illinois courts are clear that when ascertaining the legislature's intent, courts begin by examining the language of the statute, reading the statute as a whole, and construing it so that no word or phrase is rendered meaningless or superfluous. *Kraft, Inc. v. Edgar*, 138 Ill.2d 178, 189 (1990); *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 324 Ill.App.3d 961, 965 (2001). Illinois courts cannot view words or phrases in isolation but, rather, must consider them in light of other relevant provisions of the statute. *In re E.B.,* 2008 WL 4943447 Ill., 2008. These statutory interpretation precepts require Commission rejection of the Proposed Order's conclusion that "a Section 7-204 proceeding is not the proper place for attempting to determine and implement improvements or enhancements to a utility's operations or performance, given that the standard

we are to apply under the statute is to determine whether the reorganization will negatively impact – not improve – a utility." *Id.* at 75.

Thus, while it is true that Section 7-204(f) conditions, in effect, can be used to help ensure that the Section 7-204(b)(1)-(7) requirements are, in fact, satisfied post-merger, Section 7-204(f) also provides the Commission with an obligation to impose conditions that it believes are necessary and appropriate to protect the public interest. Prior Commission orders related to proposed utility mergers support the AG's argument on this point.

As the AG noted in its Reply Brief, one example of the Commission's application of a condition designed to improve service quality can be found in the Commission's 1999 order approving the merger between Ameritech, Inc. and SBC Communications, Inc., the acquiring, Texas-based corporation. In that decision, the Commission imposed a condition that it specifically noted was necessary to *improve Ameritech's existing service quality found to be deficient by the Commission* – not unlike the clear evidence of mismanagement by Peoples Gas of the AMRP, and the requested AG and City/CUB conditions designed to set the AMRP operation on a better operational course. There, the Commission ruled:

> *Ameritech Illinois' repeated failure to meet the OOS>24 service standard, however, suggests that the existing service quality mechanism in the Alternative Regulation Plan does not provide an adequate incentive for the company to comply with the standard.*
>
> […] *The Commission finds that imposing a condition that relates to Ameritech Illinois' avoided cost of meeting its service quality obligations should eliminate the company's current cost incentive not to meet the OOS>24 standard.* Accordingly, and pursuant to its authority under § 7-204(f), the Commission requires the Joint Applicants to demonstrate to the Commission, within six (6) months after obtaining all necessary regulatory approvals and closing the merger, that Ameritech Illinois is in compliance with the OOS>24 service standard. The Joint Applicants shall demonstrate compliance in the same manner currently used by the

> Commission and Ameritech Illinois to measure the company's compliance with the OOS>24 service standard. If, after notice and hearing, the Commission determines that the Joint Applicants have not demonstrated that Ameritech Illinois is in compliance with the OOS>24 service standard during the last month of the six month period, the Commission shall assess a $15 million penalty fine ($30 million X 50%), separate and apart from any annual rate reduction resulting from the service quality component of the company's Alternative Regulation Plan… […]
>
> *The condition the Commission imposes here is designed to ensure that the Joint Applicants focus on the OOS>24 problem and devote the necessary resources to meeting the standard.* The Commission has attempted to craft a condition that equates Ameritech Illinois' estimated costs of complying with the OOS>24 standard with the company's costs in avoiding it. The Commission believes that the condition is fair, protects Ameritech Illinois and its customers from risks resulting from the merger, and provides the necessary incentive to comply with the OOS>24 standard. (cites omitted)

In re SBC Communications, Inc. 1999 WL 1331303 (ICC Docket No. 98-0555, September 23, 1999) (emphasis added). This merger condition is but one example of the function of Section 7-204(f) in providing the Commission with the authority to premise merger approval on the conditions it believes are necessary to protect the public interest, including conditions that would create *improvements in existing service.* It also aligns with the AG and City/CUB contentions that should the Commission approve the merger, additional conditions are needed to improve the existing deficient management of the PGL AMRP and provide ratepayers with real, tangible benefits. In other words, even if the JA had satisfied the requirements of Section 7-204(b) designed to ensure that the quality, reliability and cost of utility service is not negatively impacted, the Commission has an obligation to attach any additional conditions that "in its judgment, are necessary to protect the interests of the public utility and its customers." 220 ILCS 5/7-204(f).

The imposition of commitments that will help protect customer interests – interests that WEC has made clear are not its priority -- was revealed in its repeated assertions throughout this case that the proposed merger is a simple, high level stock transaction, as the testimony of the JA's lead witness, Wisconsin Energy Corporation President Allen Leverett, makes clear. When asked whether the protection of the interests of the utilities and their customers in a reorganization should require a commitment to improve identified deficiencies in a utility's operations (particularly one as troubled as Peoples Gas's AMRP), the Joint Applicants stated:

> that 'protection of the interests' of utilities and their customers means preventing harm, diminishment or other adverse effects from occurring to those interests, and in this context, 'protection' thus does not mean requiring that the position of those parties be improved. *In this context, therefore, 'improvement of deficiencies' would be above and beyond what is required for the protection of interests.*

AG Ex. 5.1 at 1 (emphasis added). Even more surprising, in Rebuttal testimony, WEC's President dismissed concerns about the future operations of the troubled AMRP as "unrelated to the proposed Reorganization." JA Ex. 6.0 at 9:272.

The Commission now has in its possession the Liberty auditors' Final Report that details the gross mismanagement of PGL's AMRP. The report mirrors the findings contained in AG witness Sebastian Coppola's testimony. Imposing conditions that will help right PGL operations and ensure rates are least cost is unquestionably appropriate and consistent with the Commission's obligations under the Act.

The evidence unequivocally shows that WEC is not prepared to step into the shoes – albeit defective shoes – of Peoples Gas and its parent company, Integrys to ensure a seamless transition overseeing the management and operation of the AMRP. As discussed above in Exception No. 1 and in the AG Initial and Reply Briefs, WEC admits it has no transition plan to

assume control over the multi-billion construction project – one characterized by ICC Staff as "*the most risky capital project undertaken by a utility in Illinois since Commonwealth Edison Company and Illinois Power Company began constructing their nuclear powered generation plants*[30]," and by the CEO of Integrys as the largest utility infrastructure project in the country.[31] This lack of a transition plan alone is evidence that WEC has not performed the necessary due diligence and preparatory work to assume control over the AMRP in a way that will not add to the already significant delay, costly inefficiencies, imprudence, and mismanagement that would diminish the utility's ability "to provide adequate, reliable, efficient, safe and least-cost public utility service," in violation of Section 7-204 of the Act. 220 ILCS 5/7-204(b)(1). But putting aside whether the JA satisfied that statutory finding, the admission constitutes evidence that demands inclusion of conditions in any merger approval that will ensure that the transaction will not negatively impact any progress that has been made to date on agreeing to and implementing Liberty audit recommendations.

The JA's troubling omission of any transition plans points to a need for specific merger conditions related to the AMRP should the Commission reject the AG's conclusion that the merger does not satisfy the service quality, reliability and rate impact dictates of Section 7-204(b). This void in transition planning is not the norm. In the Commission's December 7, 2011 order in the recent Nicor/AGL Resources merger, as discussed in more detail above, the Commission specifically pointed to the existence of transition meetings between the acquired and acquiring companies as evidence that Section 7-204(b)(1) would be satisfied:

> Beyond their evidence of prior and ongoing operating experience, and of specific pledges in support of future operations, the JA point

[30] Staff Ex. 2.0 at 22:563-576 (emphasis added).

[3131] Statement of Integrys CEO Charles Schrock, ICC Open Meeting of May 20, 2015.

> to the ongoing process of integrating the merging entities, as described above. The fact that the JA are conducting this process with a significant commitment of personnel is itself evidence that service quality will be maintained after reorganization. *Indeed, it is, conceptually, exactly what needs to occur to achieve a smooth integration of the merging entities.*

Nicor Merger Order at 13 (emphasis added). Those findings stand in stark contrast to the evidence in this proceeding, which shows a glaring absence of transitional planning between WEC and PGL to enable a smooth transition in corporate ownership and management of the AMRP. Such transition or integration meetings, unfortunately, have not occurred in this instance. What is clear from the record of this case is that additional conditions are needed to protect the public interest, even if the Commission concludes that Section 7-204(b) provisions have been satisfied.

B. Commission Adoption of the AG and City/CUB-Proposed Conditions Are Necessary to Ensure that AMRP Management and Cost Control Improves Under the New PGL Owners.

With that understanding of Section 7-204(f) and the Commission's release this past week of the Liberty Audit Report in mind, it is clear that Peoples Gas customers and the City of Chicago will (1) experience unequivocal rate shock beyond that which they unfortunately have already experienced over the last five years since the approval of the AMRP and (2) lack reasonable assurance that the right high-risk main is being identified and replaced to ensure the safety and integrity of the delivery system, unless additional conditions are attached to Wisconsin Energy's acquisition of Peoples Gas. The Liberty auditors' verdict is in: notwithstanding the passage of five years of AMRP work, the auditors found, among its many findings, that (1) the Company has failed to achieve significant reductions in leak rates; (2) there is still a critical lack of adequate management, control and oversight of the AMRP at PGL and

Integrys; (3) neither PGL nor Integrys has any idea, nor has in its possession, a prediction or ability to predict the costs of the project; (4) the 2009 estimate of a $2.63 billion AMRP price tag ballooned to $4.45 billion in a 2012 estimate; and (5) costs will show a material and significant increase over the 2012 estimate when and if Peoples Gas gains the ability to produce the next cost estimate. Liberty Audit Report, pages ES-1 – ES-3. The failure to exert any management over costs, and analyze what work was being accomplished for the dollars spent is perhaps best summarized in the following observation of the Liberty auditors:

> Liberty found no substantial cost analysis. Even basic factors, such as root-causes behind the relative performance of the shops, the factors behind differing performance levels by contractors, dollars per mile results, and the evolution of costs over the AMRP's first few years remain unanalyzed.

Liberty Final Report at L-10.

How and what must be done to correct these gross inadequacies in cost and overall project management *now* must be viewed as paramount by the Commission as it considers handing over the keys to this massive, unprecedented construction project and analyzes which conditions should be attached to any merger approval to protect ratepayers. Stated another way, it is not enough for the Commission to assert that the business of mending all of the defects in the AMRP should be left to a management audit process that will not be completed for years to come. PGL ratepayers and the City of Chicago deserve better. Just as important, the Commission's obligations under the PUA to protect the public interest and ensure least-cost rates demand bold action now. Indeed, the Commission itself has made unflinching public statements, both at the Open Meeting of May 20, 2015 and in its press statement accompanying the release of the audit, that Peoples Gas customers will *not* pay for unreasonable costs associated with

AMRP mismanagement.[32] While the People are pleased that this sentiment has been publicly announced by individual Commissioners, in particular since it is clear that existing customer rates have steadily and significantly increased since the AMRP began in 2010 due to a grossly mismanaged construction process, time is of the essence. The Commission surely must recognize that *this docket,* in which the governing statute invites regulators to impose those conditions on merger approval it deems necessary to protect the public interest, provides it with a clear opportunity to require and ensure the critical changes that are needed to rein in cost overruns, diminish main leak rates, and otherwise ensure that Peoples Gas's utility service is not made less "adequate, reliable, efficient, safe and least-cost." 220 ILCS 5.7-204(b)(1). The AG's recommended conditions needed to ensure the public interest, but wrongly omitted from the Proposed Order, are discussed below and also listed in **Appendix B** attached this Brief on Exceptions. The Commission should note that the Proposed Language discussed below should ONLY be inserted in its Final Order should the Commission deem merger approval is in order.

1. The Commission Should Approve a Five-Year Rate Freeze as a Condition of Merger Approval.

The Proposed Order adopts what the AG showed in its Initial and Reply briefs was, essentially, a meaningless commitment for a two-year rate freeze as a condition of the merger, and declines to adopt the five-year freeze recommended by City/CUB witness Michael Gorman and supported by the AG. In doing so, the Proposed Order reasons:

> …the Commission declines to impose a longer "rate freeze" on the Joint Applicants than the two year period voluntarily committed to by Wisconsin Energy in its Application. The Commission has determined that there is no basis for such an extension, while a lengthier extension would create problems with respect to the fact

[3232] ICC Press Release of May 20, 2015 at 1.

> that North Shore has no means, such as Rider QIP, to recover its capital expenses in between rate cases. Peoples Gas would also have a problem with a longer freeze because of the cap on the operation of Rider QIP.

PO at 73. This rationale is both disturbing and defective for a couple of reasons.

First, with regard to North Shore, the Proposed Order's suggestion that North Shore *must* be provided with rider rate recovery between rate cases, lest it suffer financially, is unsupported by any facts or law. Under Section 9-220.3 of the Act, only natural gas utilities that serve more than 700,000 customers are entitled to petition the Commission for a Rider QIP tariff. North Shore serves about 159,000 customers in the northern suburbs of Chicago. The General Assembly authorized such tariffs for larger gas utilities in Illinois in an effort to reduce the number of miles of cast iron/ductile iron ("CI/DI") main in gas utility distribution systems throughout the state. Importantly, *North Shore has no CI/DI main in its system.* Accordingly, it has no legal basis for rider recovery of infrastructure investment between rate cases.

Moreover, the ability to recover surcharges between rate cases is not an inherent right for utilities. Again, the ability to petition the Commission for such riders has been limited to certain larger gas utilities under Section 9-220.3 of the Act and qualifying water utilities under Section 9-220.2 if the Act. In addition, the Illinois Appellate Court has rejected the notion that infrastructure investments require cost recovery between rate cases through a rider, unless statutorily authorized. *People ex rel. Madigan v. Illinois Commerce Comm'n,* 2011 IL App (1st) 100654. Accordingly, the notion that North Shore Gas Company cannot financially withstand a longer rate freeze than a two-year period because it lacks a Rider QIP is simply false.

As for the Proposed Order's concern that a longer rate freeze fails to acknowledge PGL's Rider QIP cap, this argument too misses the mark. First, a review of the cited testimony that

proffered this argument (JA Ex. 6.0 at 34) includes no specific discussion of dollar amounts tied to either the Rider QIP claim, or any kind of evidence that a longer rate freeze would interfere with AMRP investment. Moreover, given JA witness Leverett's astounding lack of knowledge about either the AMRP or Rider QIP revealed in cross-examination, these arguments in particular ring hollow. *See, e.g.,* Tr. at 146-237.

Second, the Liberty Final Report made clear that PGL has a significant amount of work to do to put the proper cost and leak management processes in place to ensure best practices for the AMRP. The Commission's priority must be on protecting ratepayers and ensuring that PGL and its new owners, should the merger be approved, get their proverbial house in order. Providing ratepayers with a five-year rate freeze while that remedial activity occurs will ensure that ratepayers are not saddled with unreasonable costs in rates for the immediate future, as the Liberty Final Report makes clear has already occurred since the inception of the AMRP. The auditors clearly documented the extent of the mismanagement in the areas of cost control:

> Liberty recommended that Peoples Gas adopt a major change in addressing costs. The holistic approach that would result involves:
>
> - Adopting a robust cost-management culture that makes costs a priority
> - Supporting that culture through strong and continuous executive commitment, communication, and oversight
> - Creating a structured plan that defines how cost management will occur and who will have accountability for it
> - Creating and using well-developed policies and procedures
> - Developing supporting systems, tools, reports, and analytical skills.
>
> The changes in organization, staffing, skills, tools, reporting, and analysis discussed in the preceding cost estimating section will support this fundamental change in approach. *Recently begun Company initiatives to address AMRP needs include significant changes in cost estimating and management. They do not, as yet, reflect a full transition to the holistic approach that Liberty*

> *recommends. Reaching that state will involve a multi-year developmental period, given where the program finds itself now.*

Liberty Final Report at B-12 (emphasis added). In all, when it comes to getting cost management back on track, the auditors concluded: "It will take major effort and significant time to implement them, even if the Company gives them a high priority and dedicated resources." *Id.* at L-11. The questions arises: why should ratepayers be exposed to additional rate increases while this gross mismanagement is dissected and addressed?

The audit report makes clear, too, that PGL management assumed no responsibility for cost control by yielding authority for cost management to subcontractors, who had every incentive to maximize costs. The auditors noted:

> The arrangements with contractors employ fixed-price or unit-cost arrangements, which makes change orders critical. The change order process governs contractor requests for increased compensation to account for unforeseen developments. Those change orders produced nearly $150 million in added costs through 2014. Liberty did not find analysis of these changes in a manner or at a level commensurate with their size. Moreover, Peoples Gas does not require contractors to provide performance information, believing that the nature of the contracts places on contractors risks of production and productivity shortfalls. This approach, however, fails to recognize the value that such information has in assessing the validity of change requests and in estimating future work cost and schedule requirements.

Id. at B-13. Moreover, the auditors further found that essential contractor management processes do not exist:

> Liberty reviewed typical AMRP field contracts with the intent of discussing their administration with program personnel. That review did not find the responsible people, including those from program management, contracts, scheduling, and construction, substantially aware of contract terms. Specific areas where Liberty found this lack of awareness include:

- The contract mandate for each party (Peoples Gas and the contractor) to name a Relationship Manager, and the identity of that person for each contract. The Relationship Managers serve as each party's primary liaison with the other, and act as each party's representative for the resolution of disputes. This requirement is important. The Peoples Gas representatives should know who is responsible to speak and commit for the contractor. Further, the contractor may not charge for this function. Peoples Gas cannot enforce the requirement if it does not know who the person is.
- The nature, or even the existence of, the contract mandated Joint Steering Committee and its mandated quarterly meetings.
- The nature, or even the existence of, the contract mandated annual executive meetings. This requirement, together with the previous requirement, establishes the governance structure for the work, and thus proves important in establishing the framework for management and ultimate accountability.
- The nature of mandated contractor reports. Contracts define reporting requirements, as well as monthly progress meetings and required attendees. Proper reporting maintains an adequate management process, and assures a uniform approach by each contractor.

> These requirements address central elements of contractor management. *Liberty's review, however, found key AMRP management people unaware even of their existence.*

Id. at M-6 (emphasis added). The point is clear: PGL currently lacks the ability to run a cost-effective and efficient AMRP. It will take the utility a significant amount of time to achieve the radical changes in corporate culture that the Liberty auditors make clear are necessary to assure the Commission that PGL (1) is targeting the right, high-risk mains for replacement and (2) will do so in a cost-effective, prudent manner. It remains to be seen how WEC will ensure that the change in corporate management of the AMRP occurs.

Notwithstanding this gross mismanagement, PGL ratepayers have, since 2010, unwittingly provided a proverbial blank check to PGL's reckless AMRP management approach

through both their base rates and the Rider QIP surcharge that now exists. As the auditors note, "Costs have grown by about 70 percent since 2009, and appear destined for another significant increase in 2015." *Id.* at B-12. Imposing a five-year rate freeze while PGL gets its management house in order – particularly now when it may be transitioning under new corporate parent owners – will send PGL management and its new owners, WEC, the appropriate signal that ratepayer financing of slipshod corporate management will no longer be tolerated.

Finally, there is substantial evidence in the record that a five-year rate freeze commitment is justified given the Gas Companies' unprecedented number of revenue stability mechanisms and the investor community's acknowledgement and recognition of the reduction in financial risk these rate stability mechanisms provide. These mechanisms include Rider QIP, Rider VBA (decoupling mechanism), Rider SSC (recovering storage service costs), and the existence of a rider to recover manufactured gas plant site cleaning cost. City/CUB Ex. 4.0. at 5:124-129. City/CUB witness Gorman noted that while these revenue stability mechanisms significantly reduce the JA's revenue-recovery risk, and increase the market value of Integrys and the Gas Companies, they result in increased rate instability for customers. *Id.* at 10. In addition, since the initiation of this docket, the Illinois Supreme Court affirmed the Commission's approval of the permanent decoupling mechanism known as Rider VBA, thereby settling any uncertainty associated with the fate of the decoupling rider and its ability to reduce revenue recovery risk for the Gas Companies. *People of the State of Illinois ex rel. Lisa Madigan vs. Illinois Commerce Commission*, 2015 IL 116005, January 23, 2015 (the "Supreme Court Decoupling Opinion"). As City/CUB witness Gorman testified, without protective actions by the Commission, added value could flow to the acquiring company's shareholders, rather than enhancing the utilities' ability to provide safe, reliable infrastructure and adequate, least-cost service. His conclusion that "a

longer term base rate freeze period will provide customers some assurance of benefits from the reorganization" is supported by the record. City/CUB Ex. 4.0 at 10:230-232.

The five-year rate freeze should be adopted as a condition of the merger.

Proposed Language:

Consistent with the arguments presented above, the Commission's final order should reflect the following changes after the new language proposed by the AG at the conclusion of the Section 7-204(b)(1) analysis at pages 28-31 of the Proposed Order:

> As we noted above in this Section 7-204(b)(1) analysis and Section 7-204(b)(7) analysis below, unless conditions are attached to the proposed merger, we cannot conclude that the merger would not diminish the utility's ability "to provide adequate, reliable, efficient, safe, and least-cost public utility service" (220 ILCS 5/7-204(b)(1)) and that the proposed transaction "is not likely to result in any adverse rate impacts on retail customers." 220 ILCS 7-204(b)(7). In addition, we are mindful of the AG's statement in their Initial Brief that the Commission cannot protect the interests of the utilities and their customers, as it is required to do under Sections 7-204(b) and (f) of the Act, if it is investigating allegations of wrongdoing involving WEC and other members of the Joint Applicants in Docket No. 15-0186 but simultaneously moving ahead with a decision as to whether WEC should be permitted to acquire the Gas Companies in this docket. Moving forward to approve a merger under these circumstances is contrary to the ICC's obligation to protect the interests of utility customers is a difficult enterprise. 220 ILCS 5/ 7-204(b),(f). Without having completed its investigation into the alleged wrongdoing, the Commission is concerned as to whether the transaction will prolong or exacerbate dysfunction in PGL's AMRP. Indeed, the Commission has already asserted a connection between the merger and the investigation. Docket No. 15-0186, Corrected Initiating Order at 1.
>
> Notwithstanding these procedural and evidentiary barriers to satisfying Section 7-204 requirements, the Commission believes the addition of several minimum conditions should be attached to

the proposed reorganization that we hope will ameliorate our significant concerns about WEC's assuming the role of corporate parent over the Gas Companies. As a starting point for the Commission's 7-204(f) analysis, we note that the record evidence shows that the list of commitments that the Joint Applicants have included as JA Ex. 15.1 REV as a condition of the merger are woefully insufficient to protect ratepayers and the public interest in general, as discussed above.

There is substantial evidence in the record that a five-year rate freeze commitment is justified given the Gas Companies' unprecedented number of revenue stability mechanisms and the investor community's acknowledgement and recognition of the reduction in financial risk these rate stability mechanisms provide, which include Rider QIP, Rider VBA (decoupling mechanism), Rider SSC (recovering storage service costs) and the existence of a rider to recover manufactured gas plant site cleaning cost. City/CUB Ex. 4.0. at 5:124-129. City/CUB witness Gorman noted that while these revenue stability mechanisms significantly reduce the JA's revenue-recovery risk, and increase the market value of Integrys and the Gas Companies, they result in increased rate instability for customers. *Id.* at 10. In addition, since the initiation of this docket, the Illinois Supreme Court affirmed the Commission's approval of the permanent decoupling mechanism known as Rider VBA, thereby settling any uncertainty associated with the fate of the decoupling rider and its ability to reduce revenue recovery risk for the Gas Companies. *People of the State of Illinois ex rel. Lisa Madigan vs. Illinois Commerce Commission*, 2015 IL 116005, January 23, 2015 (the "Supreme Court Decoupling Opinion"). As City/CUB witness Gorman testified, without protective actions by the Commission, that added value could flow to the acquiring company's shareholders, rather than enhancing the utilities' ability to provide safe, reliable infrastructure and adequate, least-cost service. His conclusion that "a longer term base rate freeze period will provide customers some assurance of benefits from the reorganization" is supported by the record. City/CUB Ex. 4.0 at 10:230-232.

The five-year rate freeze should be adopted as a condition of the merger.

In addition, we hereby adopt the conditions discussed further below to help ensure that the merger will not diminish the Gas Companies' ability "to provide adequate, reliable, efficient, safe, and least-cost public utility service" (220 ILCS 5/7-

204(b)(1)) and that the proposed transaction "is not likely to result in any adverse rate impacts on retail customers." 220 ILCS 7-204(b)(7). In addition, the protection of the public interest pursuant to Section 7-204(f) demands that the Joint Applicants commit to the conditions that are attached as Appendix A. These are discussed further below.

2. The AG-Proposed AMRP Conditions Should Be Adopted by the Commission as a Prerequisite to Merger Approval – In Particular the Requirement that the JA Re-evaluate the AMRP and Scale the Program to a Level of Cast Iron/Ductile Iron Replacement and Related Infrastructure Upgrades that is Manageable and Targets High Risk Segments First.

As discussed in Exception No. 2 of this Brief on Exceptions, the Commission must not blindly adopt the Joint Applicants' commitment to complete the AMRP by 2030 – a date that the record and the AG Briefs make clear is not linked to any safety assessment and has no basis in law. Now another document has confirmed that assessment: the Liberty Final Report. The auditors note at pages D-9 – D-12 of their Report that completion of the AMRP by 2030 is highly unlikely and unrealistic given past main replacement rates since the project began in 2010. The auditors also note that PGL lacks a clear plan "defining main installation quantities and the absence of a metric employing the ratio of installed to retired miles make such monitoring difficult." Liberty Final Report at D-9. They state that PGL stopped tracking progress to date on retirements and installation of new main in 2012, and, moreover, the charting contains incorrect data. *Id.* at D-10. The December 2014 progress report, coming two years later, still shows this chart in its incorrect state. Most significantly, management cited this same chart as evidence that the project is on track, and in fact somewhat ahead of schedule. The auditors noted that "Peoples Gas' reliance on this chart (with its incorrect data points) as an indicator of program performance in 2014 provides a clear example of the need for significant

change and improvement in AMRP monitoring and oversight." *Id.* at D-10. Liberty auditors corrected the information and found that the corrected information

> places AMRP progress actually behind, not ahead of, plan in 2012. It remained so in 2013, and fell further behind in 2014. The deviation at the end of 2014 amounts to about 100 miles, which equates roughly to one year of planned production. The production trend after four full production years deviates from the plan, with the deviation growing in 2014.

Id. at D-10. The auditors conclude:

> Projecting an AMRP completion date needs to consider the installment/retirement ratio. Extrapolating retirement data to date suggests that a significant delay past 2030 completion looms. Liberty describes below its basis for concluding that the program has already fallen a year or more behind schedule. If in fact it has, extrapolating that delay across the long remaining AMRP life produces a completion date far behind the one addressed in the 2009 rate case. The need for corrective measures thus becomes clear. However, such an extrapolation is simplistic. It may prove incorrect based on actual physical installation progress so far. On the whole, Liberty considers pessimism to reflect the better judgment. This report addresses the many areas where program management and control warrant material improvement. It also addresses problems with progress information completeness and accuracy and the lack of analysis of data that does exist.
>
> Absent top quality management and control, and lacking comprehensive and accurate performance data and reporting, it becomes difficult to maintain the optimism required to anticipate strong schedule performance. Super-projects (like the AMRP) invariably prove very difficult to manage, even under the best circumstances. Current circumstances and the current AMRP management mode make it proper to consider the Company's ability to sustain required production levels needed to support 2030 completion at high risk.

Id. at D-12. Later in the auditors' report, they state unequivocally: "The AMRP does not have the capability to assess in a credible way whether the program's 20-year duration remains achievable." *Id.* at H-11. Yet, inconceivably, the Proposed Order seeks to impose the 2030

completion date (and all of the rate impacts associated with retaining that unrealistic date) as a condition of the merger.

As the testimony of AG witness Coppola and City witness Cheaks testified, Peoples Gas has been unable to maintain a pace that would allow them to complete the AMRP by 2030. That fact is unrebutted and, now, confirmed by the Liberty auditors. Even the Company's current pace has resulted in huge cost overruns and unrelenting rate increases since the AMRP was approved in 2010, as the Liberty Final Report makes clear.

AG witness Coppola's assessment of the rate impacts of blindly attempting to maintain an arbitrary 2030 completion date makes clear that the Commission must require the Joint Applicants to commit to improving the current operation of the AMRP by reassessing the scale and timeline of the program to a manageable level. While the Proposed Order insists that this docket "is not the proper forum for either evaluating or implementing specific corrective action with respect to the AMRP, or examining the ongoing Liberty investigation" and is "beyond the scope of a Section 7-204 proceeding," it nevertheless insists on imposing a 2030 AMRP completion date on the JA, which the record shows has no basis in fact or law and will ensure rate shock for PGL's customers. These findings are both inconsistent and hardly in ratepayers best interests.

The Commission must not ignore the findings of the Liberty auditors related to the AMRP within the context of assessing this proposed merger. This order is the vehicle for ensuring that the Joint Applicants are required to commit to implementing *all* findings of the Commission-ordered Liberty audit now being conducted, without the kind of equivocation that permeates the Proposed Order's Condition Nos. 9 and 10, as noted earlier in this Brief on Exceptions. While the Liberty auditors focus on internal remediation within Peoples Gas and its

corporate parent, the AG- and City/CUB-proposed AMRP-related conditions focus on keeping the Commission informed of AMRP progress, improving coordination of construction activities with the City, ensuring that high-risk mains are prioritized and that rates are least cost. Importantly, no condition is inconsistent with the Liberty auditors' recommendations, as the Proposed Order fears. *See* PO at 31. With that in mind, any approval of the merger should be conditioned on the JA committing to the following AMRP improvements, in addition to a commitment from the Joint Applicants that they will implement the auditors' recommendations *as proposed in the Liberty Final Report*. These conditions will help ensure the safety and reliability of the PGL distribution system, and ensure that rates are least cost, consistent with Sections 7-204(b)(1) and (7) of the Act:

i. Peoples Gas shall perform a thorough evaluation of the AMRP and scale the program to a level of cast iron/ductile iron replacement and related infrastructure upgrades that is manageable, targets high priority, high risk segments first, cost- effective, and minimizes the impact on customer rates.

ii. Peoples Gas shall commit to a transparent process of providing annual reports to the Commission, reconciling its actual vs. forecasted AMRP investments, and provide an accounting of financial and non-financial benefits realized from the AMRP to date.

iii. Peoples Gas will present to the Commission an annual, detailed, work plan for the remainder of the AMRP program that shows: (1) the planned infrastructure replacement segments for the upcoming 12-month period and their related cost; (2) the Main Ranking Index ("MRI") of each planned targeted segment; (3) a list of the mains and other infrastructure that are still in need of replacement, along with their respective MRI ranking and projected cost to complete; (4) the total projected annual cost to complete the program and quantity of mains, services, meters and other infrastructure to be replaced and installed. (5) an explanation and detailed corrective action/implementation

plan for improved coordination with the City of Chicago permit and public works activities; and (6) a detailed corrective action plan and status report for implementation of the approved final recommendations from the pending outside audit.

iv. Peoples Gas shall credit customers for all construction fines and penalties paid from the beginning of 2011 to date to the City of Chicago, plus any fines and penalties incurred through the close of the merger, that were recovered in base rates or infrastructure riders. The credits could be flowed through PGL's Rider QIP during a single month or alternatively contributed by PGL to its "Share the Warmth" fund.

v. Going forward, Peoples Gas shareholders should bear the costs of any such City of Chicago fines and penalties associated with AMRP and other construction activity.

vi. The Joint Applicants shall commit unconditionally to implement all audit recommendations of *both* the Interim and Final Liberty audit reports.

vii. The Joint Applicants shall commit to fully cooperating with the Commission's investigation into allegations of misconduct and improprieties in the PGL AMRP (ICC Docket No. 15-0142), and implementing any corrective actions, including customer refunds of AMRP costs deemed imprudent by the Commission, as ordered by the Commission in that and any other docket related to review of the AMRP and PGL's Rider QIP. (AG Ex. 3.0 at 6.0 at 2-3:37-46.)

viii. The Joint Applicants shall commit to City of Chicago witness Cheaks' proposed conditions that are designed to revamp PGL's coordination with CDOT. They include:

- Requiring a weekly, block-by-block schedule of construction activities be given to CDOT and the ICC, provided on a five-year, annual, and monthly basis.
- Requiring that any Field Order Authorizations or Change Orders be communicated within 24 hours to CDOT.
- Requiring the newly formed entity to actively participate in CDOT's dotMaps website in order to better collaborate with all occupants of the Public Way.

- Requiring that PGL improve their performance in the following categories, with financial penalties for failure to improve that cannot be recovered from PGL's ratepayers:
  - Permitted timeframe adherence (being on schedule more often)
  - Approved capital and O&M spend adherence (being on budget more often)
  - Change order spending and communication
  - Management reserve spending and budgeting
  - Time needed to close Field Order Authorizations and Change Orders
  - Contractor "Hits" on City facilities (City/CUB Ex. 3.0 at 4-5.)

These conditions will help to ensure both the safety and reliability of the Peoples Gas distribution network and that the impact of the AMRP on future customer rates will be minimized, thereby ensuring least cost utility service in accordance with Sections 7-204(b)(1) and (b)(7) of the Act.

Proposed Language:

Consistent with the arguments presented above, the Commission's final order should add the following new language to its discussion of subsections 7-204(b)(1) and (b)(7), at the end of the 7-204(b)(1) conclusion, beginning at page 31 of the Proposed Order:

Commission Analysis and Conclusion

The Commission cannot ignore the findings of the Liberty auditors related to the AMRP within the context of assessing this proposed merger. This order is the vehicle for ensuring that the Joint Applicants are required to commit to implementing *all* findings of the Commission-ordered Liberty audit now being conducted, without the kind of equivocation that permeates Proposed Order conditions 9 and 10, as noted earlier in this Brief on Exceptions. While the Liberty auditors focus on internal remediation within Peoples Gas and its corporate parent, the AG- and City of Chicago-proposed AMRP-related conditions focus on keeping the Commission informed of AMRP progress, improving coordination of construction activities with the City of Chicago, ensuring that high-risk mains are prioritized and that rates are least

cost. Importantly, no condition is inconsistent with the Liberty auditors' recommendations, as the Proposed Order fears. *See* PO at 31. With that in mind, any approval of the merger should be conditioned on the JAs committing to the following AMRP improvements, in addition to a commitment from the Joint Applicants that they will implement the auditors' recommendations as proposed in the Final Audit Report. These conditions will help ensure the safety and reliability of the PGL distribution system, and ensure that rates are least cost, consistent with Sections 7-204(b)(1) and (7) of the Act. They are as follows:

- Peoples Gas shall perform a thorough evaluation of the AMRP and scale the program to a level of cast iron/ductile iron replacement and related infrastructure upgrades that is manageable, targets high priority, high risk segments first, cost- effective, and minimizes the impact on customer rates.

- Peoples Gas shall commit to a transparent process of providing annual reports to the Commission, reconciling its actual vs. forecasted AMRP investments, and provide an accounting of financial and non-financial benefits realized from the AMRP to date.

- Peoples Gas will present to the Commission an annual, detailed, work plan for the remainder of the AMRP program that shows: (1) the planned infrastructure replacement segments for the upcoming 12-month period and their related cost; (2) the Main Ranking Index ("MRI") of each planned targeted segment; (3) a list of the mains and other infrastructure that are still in need of replacement, along with their respective MRI ranking and projected cost to complete; (4) the total projected annual cost to complete the program and quantity of mains, services, meters and other infrastructure to be replaced and installed. (5) an explanation and detailed corrective action/implementation plan for improved coordination with the City of Chicago permit and public works activities; and (6) a detailed corrective action plan and status report for implementation of the approved final recommendations from the pending outside audit.

- Peoples Gas shall credit customers for all construction fines and penalties paid from the beginning of 2011 to date to the City of Chicago, plus any fines and penalties incurred

through the close of the merger, that were recovered in base rates or infrastructure riders. The credits could be flowed through PGL's Rider QIP during a single month or alternatively contributed by PGL to its "Share the Warmth" fund.

- Going forward, Peoples Gas shareholders should bear the costs of any such City of Chicago fines and penalties associated with AMRP and other construction activity.

- The Joint Applicants shall commit unconditionally to implement all audit recommendations of *both* the Interim and Final Liberty audit reports.

- The Joint Applicants shall commit to fully cooperating with the Commission's investigation into allegations of misconduct and improprieties in the PGL AMRP (ICC Docket No. 15-0142), and implementing any corrective actions, including customer refunds of AMRP costs deemed imprudent by the Commission, as ordered by the Commission in that and any other docket related to review of the AMRP and PGL's Rider QIP. (AG Ex. 3.0 at 6.0 at 2-3:37-46.)

- The Joint Applicants shall commit to City of Chicago witness Cheaks' proposed conditions that are designed to revamp PGL's coordination with CDOT. They include:

  - Requiring a weekly, block-by-block schedule of construction activities be given to CDOT and the ICC, provided on a five-year, annual, and monthly basis.
  - Requiring that any Field Order Authorizations or Change Orders be communicated within 24 hours to CDOT.
  - Requiring the newly formed entity to actively participate in CDOT's dotMaps website in order to better collaborate with all occupants of the Public Way.
  - Requiring that PGL improve their performance in the following categories, with financial penalties for failure to improve that cannot be recovered from PGL's ratepayers:
  - Permitted timeframe adherence (being on schedule more often)
  - Approved capital and O&M spend adherence (being on budget more often)

- Change order spending and communication
- Management reserve spending and budgeting
- Time needed to close Field Order Authorizations and Change Orders
- Contractor "Hits" on City facilities (City/CUB Ex. 3.0 at 4-5.)

These conditions will help to ensure both the safety and reliability of the Peoples Gas distribution network and that the impact of the AMRP on future customer rates will be minimized, thereby ensuring least cost utility service in accordance with Sections 7-204(b)(1) and (b)(7) of the Act.

3. The Proposed Order's Condition No. 35 Is Not Substantive.

Appendix A attached to the Proposed Order includes Condition No. 35, which provides that "The Joint Applicants will review and attempt to improve their performance with respect to the AMRP on a continuing basis as work on the project progresses." Proposed Order, Appendix A at 6. This condition has no substance. It sets no benchmarks for improvements or requires nothing other than that the JA "try hard" to improve AMRP performance. Moreover, Condition No. 35 is subsumed by the Commission's 2012 Rate Case Order, which, as discussed above, requires Peoples Gas to implement the Liberty Final Report recommendations. Implementing the Liberty recommendations should improve AMRP performance. While harmless, Condition No. 35 provides no protection for Peoples Gas's customers.

4. A Customer Charge Reduction Will Provide PGL Ratepayers With A Tangible Benefit And Should Be Adopted As a Condition of Merger Approval.

In its Initial and Reply Briefs, the AG noted that in addition to experiencing the financial pains of five PGL/NS rate increases over the last seven years, the Gas Companies' customers have seen their fixed monthly customer charges grow to 63% of the bill for PGL customers and

73% for NS customers. Peoples Gas and North Shore Gas customers now pay the highest fixed monthly customer charges and overall rates in Illinois, with customer charges at $30.84 and $23.94 for Peoples Gas and North Shore heating customers, and $16.37 and $15.70 for Peoples and North Shore non-heating customers, respectively.[33]

Including a merger condition that lowers the customer charge portion of the bill such that no more than 40% of revenues is collected through the residential heating class customer charge is in the public interest and fully justified if customers are to see value from the reorganization beyond any rate freeze commitment. The Proposed Order quickly rejects that proposal, arguing that the record lacks evidence supporting the proposal, and that the recent 2014 PGL/NS rate case recently established rate design for the Companies' customers. PO at 88-89. A review of the conditions included in the Proposed Order shows that this rationale, however, is selectively and inconsistently applied.

For example, the conditions numbered 37-39, which include the requirement that the JA will (1) build a state-of-the-art training facility in Chicago; (2) extend for five years (from April 2015) PGL's funding of technical training at Dawson Technical Institute; and (3) contribute $5 million of shareholder money over the next five years to the PGL Share the Warmth program, are not adopted because there was a substantial record developed in support of the measures. They were adopted because the JA agreed to implement the commitments in acquiescence to the City/CUB requests to do so. *See* City of Chicago/CUB Ex. 1.0 at 3-4. While these are welcome additions to any list of conditions, they are not included because fact- or data-based record

[33] The Peoples Gas Light and Coke Company Schedule of Rates for Gas Service, ILL C.C. NO. 28, Twelfth Revised Sheet No. 5, Service Classification No. 1 (Small Residential Service), available at http://www.peoplesgasdelivery.com/company/tariffs/sc1.pdf ; North Shore Gas Company Schedule of Rates for Gas Service, ILL. C.C. NO. 17, Twelfth Revised Sheet No. 6, Service Classification No. 1 (Small Residential Service), available at http://www.northshoregasdelivery.com/company/tariffs/sc1.pdf (last accessed May 26, 2015).

evidence justified their inclusion and expenditure amount. The request was made and the JA complied.

Like PO conditions 37-39, the AG's request for the JA to reduce the inordinately high customer charge that PGL and NS residential heating customers currently pay is similarly designed to create a real, tangible benefit to any merger approval. PGL and NS ratepayers have seen their monthly customer charges rise by almost 200% (Peoples) and 179% (North Shore) since the inception of Rider VBA back in 2008. Currently, PGL and NS customers pay the highest customer charge in the state by a long shot compared with other Illinois gas companies:

Residential Heating Rates: Illinois Natural Gas Utilities /a/				
	Heating		Non-Heating	
Rates	Customer Charge	Distribution Charge	Customer Charge	Distribution Charge
Ameren Illinois (Zone 1)	$22.31	$0.09320	These utilities do not distinguish "heating" and "non-heating" rates.	
Ameren Illinois (Zone 2)	$19.97	$0.07692		
Ameren Illinois (Zone 3)	$22.31	$0.09320		
MidAmerican	$15.97 /b/	$0.07664		
NICOR Gas	$13.55	$0.0485		
NSG (existing) /c/	$23.94	$0.11138	$15.70	$.08547
PGL (existing) /c/	$30.84	$0.19477	$16.37	$0.14.964
NOTES: /a/ Excluding riders. /b/ Basic Service Charge plus Meter Class 1 Charge. /c/ NSG/PGL Exhibit 15.4, ICC Docket No. 14-0224/0225				

Moreover, adding the customer charge cap to the merger condition list is particularly appropriate in view of facts arising since the filing of testimony in this case and the Commission's January 21, 2015 rate case Order in Docket Nos. 14-0224/0225 (cons.): specifically, the January 23, 2015 Illinois Supreme Court decision affirming the Commission's approval of a permanent decoupling mechanism, Rider VBA[34] for PGL and NS, thereby settling any uncertainty associated with the fate of the decoupling rider and its ability to reduce revenue recovery risk for the Gas Companies. *People of the State of Illinois ex rel. Lisa Madigan vs. Illinois Commerce Commission*, 2015 IL 116005, January 23, 2015 (the "Supreme Court Decoupling Opinion"). Since the Supreme Court's decision now guarantees that Peoples Gas and North Shore Gas will continue to recover their entire Commission-approved revenue requirement each year, the Commission should add the customer charge reduction commitment to the list of merger conditions in light of the increased value this reduction in shareholder risk brings to WEC.

A WEC commitment to lower the customer charge to a level that caps recovery of revenues through the fixed charge portion of monthly customer bills would acknowledge this reduction in risk and provide a tangible value to PGL/NS customers. Doing so, too, would provide Peoples Gas and North Shore customers more control over their natural gas bills, enabling the General Assembly's public policy goal of reducing the usage of natural gas and achieving least cost utility service, consistent with Sections 8-104 and 1-102 of the Act. In

[34] Rider VBA uncouples the Companies' revenues from their sales such that utilities that have "decoupling" riders have recovery of the full amount of their Commission-approved revenue requirement guaranteed, through an annual reconciliation process that accounts for under-recovery or over-recovery of approved revenues and authorizes customer bill surcharges or credits, respectively. The Commission first approved a pilot for Rider VBA in its 2007 rate case proceeding, Docket Nos. 07-0241/07-0242 (cons.). After the four-year pilot ended, the Commission approved Rider VBA on a permanent basis in its January 10, 2012 decision in Docket Nos. 11-0280/11-0281 (cons.).

addition to providing some tangible benefit to the Gas Companies' customers, lower customer charges minimize cross-subsidies of high users by low users of natural gas, and serves the General Assembly's and the Commission's goal of encouraging energy efficiency by giving customers more control over their bills.

In view of these new facts and circumstances, adoption of a (revenue-neutral) reduction in the customer charge would provide additional, tangible value to the Gas Companies' customers outside of any rate freeze condition, and is consistent with the public interest.

Proposed Language:

Consistent with the arguments presented above, the Commission's final order should reflect the following changes at pages 88-89 of the Proposed Order:

> **Commission Analysis and Conclusion**
>
> The AG proposes a condition that would lower the customer charge for the Gas Companies residential heating class to 40% of their bill. ~~The Commission made the determination of the customer charge portion based on the evidence that was presented in Docket Nos. 14-0224/14-0225 (Consol.). There has been no record evidence in this docket as to this proposal and the Commission is reluctant to impose this cap outside of a rate case. It is noted that the first time the AG proposed this condition was in its initial post hearing brief. The Commission will not make changes to the rate design from the recent rate case and this proposal by the AG is denied.~~ It is no secret that in addition to experiencing the financial pains of five PGL/NS rate increases over the last seven years, the Gas Companies' customers have seen their fixed monthly customer charges grow to 63% of the bill for PGL customers and 73% for NS customers. Peoples Gas and North Shore Gas customers now pay the highest fixed monthly customer charges and overall rates in Illinois, with customer charges at $30.84 and $23.94 for Peoples Gas and North Shore

heating customers, and $16.37 and $15.70 for Peoples and North Shore non-heating customers, respectively, the AG points out.[35]

Including a merger condition that lowers the customer charge portion of the bill such that no more than 40% of revenues is collected through the residential heating class customer charge is in the public interest and fully justified if customers are to see value from the reorganization beyond any rate freeze commitment, according to the AG. Adding the customer charge cap to the merger condition list is particularly appropriate in view of facts arising since the filing of testimony in this case and the Commission's January 21, 2015 rate case Order in Docket Nos. 14-0224/0225 (cons.): specifically, the January 23, 2015 Supreme Court Decoupling Opinion, which affirmed the Commission's approval of Rider VBA (Volume Balancing Adjustment). Since the Supreme Court's decision now guarantees that Peoples Gas and North Shore Gas will continue to recover their entire Commission-approved revenue requirement each year, the AG argues that the Commission should add the customer charge reduction commitment to the list of merger conditions in light of the increased value this reduction in shareholder risk brings to WEC.

The Supreme Court's decision just two days after entry of the Commission's Final Order in Docket Nos. 14-0224/0225 (cons.) provides added value to WEC shareholders because it effectively settled any uncertainty as to whether the Gas Companies would be permitted to retain their decoupling riders going forward, according to the AG. A WEC commitment to lower the customer charge to a level that caps recovery of revenues through the fixed charge portion of monthly customer bills would acknowledge this reduction in risk and provide a tangible value to PGL/NS customers. Doing so, too, would provide Peoples Gas and North Shore customers more control over their natural gas bills, enabling the General Assembly's public policy goal of reducing the usage of natural gas and achieving least cost utility service, consistent with Sections 8-104 and 1-102 of the Act, the AG states. In addition to providing some tangible benefit to the Gas Companies' customers, the AG notes that lower customer charges minimize cross-subsidies of high users by low users of natural gas, and serves the General Assembly's and the Commission's goal of encouraging energy efficiency by giving customers more control over their bills

[35] http://www.peoplesgasdelivery.com/company/tariffs/sc1.pdf; http://www.northshoregasdelivery.com/company/tariffs/sc1.pdf (last accessed March 27, 2015).

> In view of these new facts and circumstances regarding Rider VBA and the revenue protections it now offers the Joint Applicants on a permanent basis, and in light of the fact that ratepayers have seen their monthly customer charges rise by almost 200% (Peoples) and 179% (North Shore) since the inception of Rider VBA, the AG urges the Commission to condition merger approval on a (revenue-neutral) lowering of the customer charge that would provide additional, tangible value to the Gas Companies' customers outside of any rate freeze condition, and is consistent with the public interest.

5. The Commission Should Reduce Rates To Reflect the JA's Most Recent Forecast of Integrys Customer Experience Project Savings in Rates as a Merger Condition.

AG witness David Effron proposed in testimony that merger approval should also be conditioned on the JA's agreement to provide an additional rate benefit to PGL and NS customers based on new information in the record in this docket that demonstrates that the Gas Companies will be experiencing significant savings post-merger related to ratepayer financing of the Integrys Customer Experience ("ICE") project.[36] His refund proposal is predicated on fully capturing savings that have come to light in this case by proposing rate changes to reflect the benefit that the Joint Applicants would experience post-merger. Specifically, Mr. Effron's proposals would permit the adjustment of rates going forward to reflect employee numbers and ICE expenses that are inconsistent with PGL and NS forecasts of these expenses included in

[36] The ICE project will unify Cfirst, which is the customer information system that Peoples Gas [and North Shore] currently uses, and the various customer information systems currently in use across Integrys. It will provide significant benefits to Peoples Gas [and North Shore] and the other Integrys regulated utilities such as improved efficiency and productivity and standardization of internal delivery which will improve customer satisfaction. In addition to unifying systems, the ICE project will improve and enhance billing, collections, call center, and self-service related offerings by ensuring that these functions are staffed appropriately to continue to leverage the opportunities of a large corporation, while maintaining the high level of service of a local utility. AG Ex. 1.0 at 12:269-284 (citing Docket Nos. 14-0224/14-0225 (cons.), PGL Ex. 13.0, at 10:207-215).

rates set pursuant to the Commission's order in the recent PGL and NS rate case, Docket Nos. 14-0224/0225 (cons.), in January of this year.

In particular, the Gas Companies included $9.2 million in expenses associated with the ICE project in their revenue requirements in Docket Nos. 14-0224/14-0225 (cons.); asserted that the ICE system would result in significant efficiencies that will produce cost reductions; and did not reflect savings associated with the project in the 2015 test year. But then, in discovery responses in this docket from the Joint Applicants in this case, they provided updated information that showed ICE project estimated net benefits beginning in 2015. AG Ex. 1.0 at 14-16:309-363. In fact, Mr. Effron testified, it is expected that ICE will produce a "net benefit (a credit to expense, i.e. pre-tax reduction in O&M)," which is "derived from forecasted system savings greater than forecasted system costs." *Id.* at 13-14:298-301, citing AG Ex. 1.3 (Joint Applicants' response to Data Request AG 2.13). This new information provided in this case contradicted the Gas Companies' position in the 14-0224/0225 rate case that ICE savings would not be achieved until 2016, with no reductions in the 2015 Test Year. *Id.* at 14:309-311. AG Ex. 1.4 (JA response to AG Data Request PGL 11.08, Docket Nos. 14-0224/14-0225 (cons.)). In other words, Mr. Effron testified, "based on the scenario presented by the Gas Companies in the rate cases, the in-service of the ICE project would be precisely timed so that a full year of costs (in excess of $19 million) would be billed to the Gas Companies in the twelve-month period that just happened to coincide with the Test Year, while, conveniently, no savings whatsoever (savings that would fully offset those costs) would be experienced until one day after the end of the Test Year." *Id.* at 14:312-318. He characterized this timeline assessment as "improbable in the extreme." *Id.* at 14:317-318.

Mr. Effron noted that in AG Data Request 2.13, the Joint Applicants were asked to explain what the statement on JA Ex. 4.1 CONFIDENTIAL[37], Page 4, that "Impact begins in 2015, credits indicate pre-tax reduction in O&M" with regard to the ICE project means. The Joint Applicants responded that: "The ICE 2016 project estimated net benefits beginning in 2015. The initial O&M estimate in the forecast years was reduced by the estimated amount of net benefit of the project. The net benefit (a credit to expense, i.e. pre-tax reduction in O&M) was derived from forecasted system savings greater than forecasted system costs." *Id.* at 15:322-329.

AG Data Request 3.05 followed up on this response by requesting any studies and/or analyses supporting the statement that "credits indicate pre-tax reduction in O&M" with regard to the ICE project. The response to this request, attached as AG Ex. 1.5, includes an attached spreadsheet, JA AG 3.05 Attach 01CONFIDENTIAL, that was prepared in conjunction with the long-term financial forecast prepared in September 2012. This spreadsheet details the forecasted costs and benefits of the ICE project. It contains numerous inconsistencies with the version of the ICE costs and benefits presented by the Gas Companies in Docket Nos. 14-0224/14-0225 (cons.). *Id.* at 15:330-338.

The Joint Applicants asserted that the basic justification for these inconsistencies was "that they were prepared at different points in time." *Id.* at 17:366-372. But Mr. Effron noted that when the AG asked the Joint Applicants (in AG Data Request 3.06, attached as AG Ex. 1.7 to describe revisions, identify when the revisions took place, and quantify the effect of the revisions on the forecasted year-by-year costs and benefits of the ICE project, the Joint Applicants described one, and only one, change: "*Subsequent to the compilation of data*

[37] The information regarding ICE discussed in this part of the AG Brief on Exceptions is not confidential.

underlying JA AG 3.05 Attach 01 CONFIDENTIAL, the estimated ICE implementation date for the Gas Companies has moved from the second to the third quarter of 2015." *Id.* at 17:382-385 (emphasis added).

In response, Mr. Effron observed:

> …if the estimated ICE implementation date for the Gas Companies was moved *back* from the second to the third quarter of 2015, it seems illogical that the billing for the ROA/depreciation on the ICE project would be moved *forward* from the beginning of 2016 to the beginning of 2015, as was assumed by the Gas Companies in the rate cases. And there is no way that moving the ICE implementation from the second to the third quarter of 2015 can even begin to explain the $10 million discrepancy between the 2015 ICE O&M expense allocated to the Gas Companies in JA AG 3.05 Attach 01CONFIDENTIAL and the 2015 ICE O&M expense allocated to the Gas Companies in the rate cases.

Id. at 17-18:386-394. He noted that if the billings for the ICE ROA/depreciation and the "hard benefits" of the ICE project begin contemporaneously with the in-service date of the ICE systems, the effect on the Gas Companies' revenue requirements would be that ICE expenses for the Gas Companies together would be approximately zero ($64,000 credit for Peoples Gas and $5,000 expense for North Shore), and the "hard benefits" would approximately offset the billings for ROA/depreciation, with the relatively minor O&M expenses associated with project organizational readiness disappearing.

Accordingly, the evidence in this case shows that if there is no adjustment to the ICE costs forecasted by the Gas Companies in those cases and the "hard benefits" commence with the in-service date of the ICE project, as the Joint Applicants assert will occur, the Gas Companies will be recovering $19.2 million in non-existent expenses when the ICE project goes into service. *Id.* at 18-19:409-414. Those non-existent expenses would consist of $10.6 million of O&M expenses associated with project readiness (which in JA AG 3.05 Attach 01CONFIDENTIAL

are only $0.4 million in 2015 and cease thereafter) and $8.6 million in ROA/depreciation that would be fully offset by the "hard benefits" of the ICE project. In effect, during the term of the proposed rate freeze, the customers would be charged for all of the annual costs of the ICE project, while 100% of the benefits of the ICE project would be retained for shareholders. *Id.* at 19:414-420.

Mr. Effron recommended that the Commission should condition its approval of the reorganization on the reduction to costs resulting from the in-service date of the ICE project (the cessation of the organizational readiness expenses and the 'hard benefits' in the form of other cost reductions) being properly credited to customers by means of a rider that would commence at the closing of the Transaction and would continue until the rates in the Gas Companies' next base rate case go into effect." AG Ex. 1.0 at 20:451-457.

In response to this proposal, the Proposed Order sides with the JA and Staff, who both argue that imposition of a rider to reflect the ICE costs (that the evidence suggests will not occur as previously argued by the Companies in the recent 14-0224/0225 rate case) is unlawful. PO at 92. While the AG notes that the Commission could authorize the commitment if the JA agreed to it, an alternative to ensure that ratepayers are not overcharged relative to this expense would be to require a one-time refund of the amount owed to ratepayers.

Unless the Commission adjusts rates going forward for a cost that the record evidence shows will not be occurring, PGL/NS customers will be paying $19.2 million per year for ICE costs for as long as the rates established in those cases are in effect, without getting the benefit of any of the offsetting system savings. The Joint Applicants have stated that they are "prepared to provide immediate benefits to customers and the Illinois communities the Gas Companies serve by making commitments that it would accept as conditions on the Commission's approval of the

Reorganization." JA Ex. 1.0, at 15:331-334. Adoption of a one-time refund that properly credits customers for the ICE savings is a reasonable condition for approval of the merger. This could be accomplished by multiplying the annual ICE expense amount, $19.2 million, times the number of years the rate freeze will be in effect. This one-time customer benefit should be adopted by the Commission as a condition of the merger.

Proposed Language:

Consistent with the arguments presented above, the Commission's final order should reflect the following changes at page 92 of the Proposed Order:

> **Commission Analysis and Conclusion**
>
> The AG requests that the Commission recognize in rates going forward a resolution to the discrepancies that exist between cost and savings information related to the Integrys Customer Experience project provided to the Commission in the 14-0224/0225 rate case and this merger proceeding. AG witness David Effron proposed in testimony that merger approval should also be conditioned on the JA's agreement to provide an additional rate benefit to PGL/NS customers based on new information in the record in this docket that demonstrates that the Gas Companies will be experiencing significant savings post-merger related to ratepayer financing of the Integrys Customer Experience ("ICE") project. His refund proposal is predicated on fully capturing savings that have come to light in this case by proposing rate changes to reflect the benefit that the Joint Applicants would experience post-merger. Specifically, Mr. Effron's proposals would permit the adjustment of rates going forward to reflect employee number and Integrys Customer Experience ("ICE") expenses that are inconsistent with PGL/NS forecasts of these expenses that were included in rates set pursuant to the Commission's order in the recent PGL/NS rate case, Docket Nos. 14-0224/0225 (cons.), in January of this year.
>
> The Commission agrees that unless the Commission adjusts rates going forward for a cost that the record evidence shows will

not be occurring, PGL/NS customers will be paying $19.2 million per year for ICE costs for as long as the rates established in those cases are in effect, without getting the benefit of any of the offsetting system savings. The Joint Applicants have stated that they are "prepared to provide immediate benefits to customers and the Illinois communities the Gas Companies serve by making commitments that it would accept as conditions on the Commission's approval of the Reorganization." JA Ex. 1.0, at 15:331-334. Adoption of a one-time refund that properly credits customers for the ICE savings is a reasonable condition for approval of the merger. This could be accomplished by multiplying the annual ICE expense amount, $19.2 million, times the number of years the rate freeze will be in effect. This one-time customer benefit is hereby adopted by the Commission as a condition of the merger.

~~impose a rider mechanism concerning the ICE project. We agree with Staff and the Joint Applicants with respect to this condition requested by the AG. This issue was addressed in the most recent rate case for the Gas Companies. A rider is only appropriate if the cost is imposed upon the utility by external circumstances over which the company has no control and the cost does not affect a utility's revenue requirement. The Commission finds that it would be a violation of the Act for the Commission to go back to adjust a single item from a utility's revenue requirement after a rate case has concluded if the Commission determined that it had set rates too high or too low. As stated by Staff, even if the Joint Applicants agreed to this proposal, the Commission cannot include such an action in its order issued in this case. Therefore, the Commission rejects the AG's requests for a rider with respect to ICE costs.~~

6. The Proposed Order's Condition No. 40 Should Be Amended to Require Peoples Gas to Participate in the Chicago Department of Transportation's dotMaps Website.

Appendix A attached to the Proposed Order includes Condition No. 40, which states that "The Joint Applicants will continue investigating whether and to what extent it is possible for the Gas Companies to participate in the Chicago Department of Transportation's ("CDOT") dotMaps website." *Id*. Like Condition No. 35, as written, Condition No. 40 contains almost no

substance. However, unlike Condition No. 35, Condition No. 40 can be modified such that it provides a benefit to Peoples Gas and its customers. In particular, the record shows that Peoples Gas should be required to participate in the CDOT's dotMaps website.

CDOT's dotMaps website provides a portal through which frequent users of Chicago's public way, like Peoples Gas, can coordinate their projects with work being done by the City's Water and Sewer Departments. City/CUB Ex. 7.0 at 12-13:239-241. City/CUB witness Cheaks pointed out that Peoples Gas could participate in dotMaps for less than the cost of one degradation fee, a cost that Peoples Gas has said it passes on to ratepayers. *Id*. at 12:236-238. Mr. Cheaks also observed that while Peoples Gas "complains that conflicts between the City's and PGL's priorities contribute to its poor [AMRP] performance, … [the utility] will not commit to participate in solutions that the City and other users of Public Ways have agreed to implement to improve coordination." *Id*. at 13:243-245.

Moreover, the Liberty auditors found that Peoples Gas's AMRP work will be done in all of the City's 50 wards and often requires doing work on both sides of the street for an entire City Block. Liberty Final Report at T-8. The auditors also found that while the City's relationship with Peoples Gas has improved recently, CDOT has perceived Peoples Gas's performance to be very poor. *Id*. at T-8 – T-9. To further improve the City-Peoples Gas relationship, as well as the performance of the AMRP, Condition No. 40 should be modified to require Peoples Gas to participate in CDOT's dotMaps website.

Proposed Language:

For the reasons described above, Condition No. 40 of Appendix A attached to the Proposed Order should be modified as follows.

40. ~~The Joint Applicants will continue investigating whether and to what extent it is possible for the Gas Companies to~~ Peoples Gas shall participate in the Chicago Department of Transportation's dotMaps website.

V. CONCLUSION

Wherefore, the Peoples of the State of Illinois respectfully request that the Commission enter a Final Order in this proceeding consistent with the arguments and proposed language provided in this Brief on Exceptions.

Respectfully submitted,

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